

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
NORTHERN DIVISION

2006 AUG 31 A 9:51

DISTRICT OF UTAH

BY: Paul G. Cassell  
CLERK OF COURT

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN J. KELLY

Defendant.

ORDER DOCKETING JURY  
INSTRUCTIONS

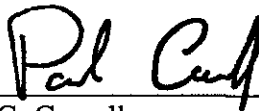
Case No. 1:05-CR-00024 PGC

Defendant Steven J. Kelly has recently sent certain correspondence to the court [#71-73]. Having been apprised that the jury instructions in this case were not docketed, the court has printed out a true and accurate copy of the jury instructions that were read to the jury in this case. The attached instructions are those instructions. The Clerk of the Court is directed to docket these instructions in this case at this time.

SO ORDERED.

DATED this 30th day of August, 2006.

BY THE COURT:



Paul G. Cassell  
United States District Judge

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH

NORTHERN DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

STEVEN J. KELLY,

Defendant.

**JURY INSTRUCTIONS**

Case No. 1:05-CR-00024 PGC

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## **INSTRUCTION NO.1**

### **MEMBERS OF THE JURY:**

Now that you have heard the evidence and the arguments, it becomes my duty to instruct you on the law that applies to this case.

It is your duty as jurors to follow the law as stated in the instructions of the Court, and to apply the rules of law so given to the facts as you find them from the evidence in the case.

Counsel may refer to these instructions in their arguments. If, however, any difference appears to you between the law as stated by counsel and that stated by the Court in these instructions, you are of course to be governed by the Court's instructions.

You are not to single out any one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict upon any other view of the law than that given in these instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Justice through trial by jury must always depend upon the willingness of each individual juror to seek the truth as to the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law, as given in the instructions of the Court.

## **INSTRUCTION NO.2**

You have been chosen as jurors in this case to try the issues of fact presented by the allegations of the Indictment and denial made by the "Not Guilty" plea of the defendant. You are to perform this duty without bias or prejudice as to any party. The law does not permit jurors to be governed by sympathy, prejudice, or public opinion. The defendant and the public expect that you will carefully and impartially consider all the evidence in the case, follow the law as stated by the Court, and reach a just verdict.

### **INSTRUCTION NO.3**

The Indictment or formal charge against the defendant is not evidence of guilt. Indeed, the defendant is presumed by the law to be innocent. The law does not require the defendant to prove his innocence or produce any evidence at all, nor does it compel him in a criminal case to take the witness stand to testify. The government has the burden of proving the defendant guilty beyond a reasonable doubt, and if it fails to do so you must acquit the defendant.

#### **INSTRUCTION NO.4**

While the government's burden of proof is a strict or heavy burden, it is not necessary that the defendant's guilt be proven beyond all possible doubt. It is only required that the government's proof exclude any "reasonable doubt" concerning the defendant's guilt. A "reasonable doubt" is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence in the case.

Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you would be willing to rely and act upon it without hesitation in the most important of your own affairs. If you are convinced that the defendant has been proved guilty beyond reasonable doubt, find him guilty. If you are not so convinced, find him not guilty.

### **INSTRUCTION NO.5**

You are here to decide whether the government has proved beyond a reasonable doubt that the defendant is guilty of the crime charged. The defendant is not on trial for any act, conduct, or offense not alleged in the Indictment. Neither are you concerned with the guilt of any other person or persons not on trial as a defendant in this case.

## **INSTRUCTION NO.6**

The evidence in this case consists of the sworn testimony of the witnesses, regardless of who may have called them; all exhibits received in evidence, regardless of who may have produced them; and all facts which may have been admitted or stipulated.

Statements and arguments of counsel are not evidence in this case. When, however, the attorneys on both sides stipulate or agree as to the existence of a fact, the jury must, unless otherwise instructed, accept the stipulation and regard that fact as conclusively proved.

Any evidence as to which an objection was sustained by the Court, and any evidence ordered stricken by the Court, must be entirely disregarded.

Anything you may have seen or heard outside the courtroom is not evidence, and must be entirely disregarded.

You are to consider only the evidence in this case. However, in your consideration of the evidence, you are not limited to the bald statements of the witnesses. On the contrary, you are permitted to draw from the facts which you find have been proved such reasonable inferences as seem justified in light of your experience. An inference is a deduction or conclusion which reason and common sense would lead you to draw from facts which are established by the evidence in the case. You should weigh all of the evidence in the case, affording each piece of evidence the weight or significance that you find it reasonably deserves.



### **INSTRUCTION NO.7**

A "Stipulation" is an agreed statement of facts between the government and the defendant. You should regard any stipulated facts as undisputed evidence.

### **INSTRUCTION NO.8**

You may consider both direct and circumstantial evidence. "Direct evidence" is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. "Circumstantial evidence" is proof of a chain of facts and circumstances indicating either the guilt or innocence of the defendant. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It requires only that you weigh all of the evidence and be convinced of the defendant's guilt beyond a reasonable doubt before he can be convicted.

## **INSTRUCTION NO.9**

Now, I have said that you must consider all of the evidence. This does not mean, however, that you must accept all of the evidence as true or accurate.

You, as jurors, are the sole judges of the credibility or "believability" of each witness and the weight to be given to their testimony. You should carefully scrutinize all the testimony given, the circumstances under which each witness has testified, and every matter in evidence that tends to show whether a witness is worthy of belief.

In weighing the testimony of the witnesses you should consider their relationship to the government or the defendant; their interest, if any, in the outcome of the case; their manner of testifying; their opportunity to observe or acquire knowledge concerning the facts about which they testified; their candor, fairness, intelligence; evidence regarding the general reputation of the witness for truth and veracity; and the extent to which they have been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

A witness may be discredited or impeached by contradictory evidence; or by evidence that at some other time the witness has said or done something, or has failed to say or do something, which is inconsistent with the witness' present testimony.

If you believe any witness has been impeached and thus discredited, it is your exclusive province to give the testimony of that witness such credibility, if any, as you may think it deserves.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness' testimony in other particulars; and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

### **INSTRUCTION NO.10**

You have heard testimony from a confidential informant in this case. An informant is someone who provides evidence against someone else for a personal reason or advantage. You must examine and weigh an informant's testimony with greater care than the testimony of an ordinary witness. You must determine whether the informant's testimony has been affected by self-interest, by an agreement he or she has with the government, by his or her own interest in the outcome of the case, or by prejudice against the defendant.

### **INSTRUCTION NO.11**

You have heard evidence of other acts or wrongs engaged in by the defendant, Steven J. Kelly. You may consider that evidence only as it bears on the defendant's motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident, and for no other purpose. Of course, the fact that defendant may have previously committed an act similar to the one charged in this case does not mean that the defendant necessarily committed the act charged in this case. You may find him guilty of the crime charged here only if the government has proven beyond a reasonable doubt that he committed it.

### **INSTRUCTION NO.12**

Count I of the Indictment alleges that on or about October 14, 2004, in the Central Division of the District of Utah, the defendant, Steven J. Kelly, did knowingly and intentionally possess with intent to distribute 5 grams or more of methamphetamine, a Schedule II controlled substance within the meaning of 21 U.S.C. § 812; all in violation of 21 U.S.C. § 841(a)(1), and punishable pursuant to 21 U.S.C. § 841(b)(1)(B).

### **INSTRUCTION NO.13**

Count II of the Indictment alleges that on or about June 30, 2004, in the Central Division of the District of Utah, the defendant, Steven J. Kelly, did knowingly and intentionally distribute 5 grams or more of methamphetamine, a Schedule II controlled substance within the meaning of 21 U.S.C. § 812; all in violation of 21 U.S.C. § 841(a)(1), and punishable pursuant to 21 U.S.C. § 841(b)(1)(B).

#### **INSTRUCTION NO.14**

The term "to distribute," as used in these instructions, means to deliver or to transfer or to attempt to deliver or to transfer possession or control of something from one person to another.

The term "to distribute" includes the sale of something by one person to another.



### **INSTRUCTION NO.15**

You are instructed as a matter of law, that methamphetamine is a Schedule II controlled substance. It is solely for the jury, however, to determine whether or not the government has proven beyond a reasonable doubt that the defendant possessed with intent to distribute a substance which was methamphetamine.

### **INSTRUCTION NO.16**

In order to sustain its burden of proof for the crime of possession of a controlled substance with intent to distribute that substance as charged in Count I of the indictment, the government must prove the following elements beyond a reasonable doubt:

One: The Defendant, Steven J. Kelly, knowingly and intentionally possessed in the District of Utah;

Two: 5 grams or more of actual methamphetamine; and

Three: Defendant intended to distribute this controlled substance.

If you find from your consideration of all the evidence that all the elements have been proven beyond a reasonable doubt, you should find the Defendant guilty. On the other hand, if you find from your consideration of all the evidence that any of the elements have not been proven beyond a reasonable doubt, you must find the Defendant not guilty.

### **INSTRUCTION NO.17**

In order to sustain its burden of proof for the crime of distribution of a controlled substance as charged in Count II of the indictment, the government must prove the following elements beyond a reasonable doubt:

One: The Defendant, Steven J. Kelly, knowingly and intentionally distributed the controlled substance in the District of Utah; and

Two: the substance was 5 grams or more of actual methamphetamine.

If you find from your consideration of all the evidence that all the elements have been proven beyond a reasonable doubt, you should find the Defendant guilty. On the other hand, if you find from your consideration of all the evidence that any of the elements have not been proven beyond a reasonable doubt, you must find the Defendant not guilty.

### **INSTRUCTION NO.18**

Section 841(a)(1) of Title 21 of the United States Code provides, in part, that:

- (A) ... it shall be unlawful for any person to knowingly or intentionally—
  - (1) to ... distribute or ... possess with intent to ... distribute ... a controlled substance.

### **INSTRUCTION NO.19**

The offenses charged in the Indictment, require the government to prove and for you to find that the defendant acted knowingly or intentionally.

To establish that the defendant acted “knowingly,” the government must prove that the defendant was conscious and aware of his actions, the defendant was acting voluntarily and intentionally, and the defendant did not act because of ignorance, mistake, or accident.

To establish that the defendant acted “intentionally,” the government must prove that the defendant acted willfully or purposefully, and not accidentally or involuntarily.

Although the knowledge or intent that a person possesses at any given time may not ordinarily be proved directly because there is no way of directly scrutinizing the workings of the human mind, you may consider evidence of the defendant’s words, acts, or omissions, along with all of the other facts and circumstances in evidence, in deciding whether the defendant acted knowingly.

You may infer, but you are certainly not required to infer, that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted. It is entirely up to you, however, to decide what facts to find from the evidence received during this trial.

## **INSTRUCTION NO.20**

The word “possess” means to own or to exert control over. The word “possession” can take on several different, but related meanings.

The law recognizes two kinds of “possession” - actual possession and constructive possession. A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A person who, although not in actual possession, knowingly has both the power and the intention at a given time to exercise dominion or control over a thing, either directly or through another person or persons, is then in constructive possession of it.

The law recognizes also that “possession” may be sole or joint. If one person alone has actual or constructive possession of a thing, then possession is sole. If two or more persons share actual or constructive possession of a thing, then possession is joint.

You may find that the element of “possession” as that term is used in these instructions is present if you find beyond a reasonable doubt that the defendant had actual or constructive possession, either alone or jointly with other.

### **INSTRUCTION NO.21**

The phrase "with intent to distribute" means to have in mind or to plan in some way to deliver or to transfer possession or control over a thing to someone else.

In attempting to determine the intent of any person you may take into consideration all the facts and circumstances shown by the evidence received in the case concerning that person.

In determining a person's "intent to distribute" controlled substances, the jury may consider, among other things, the purity of the controlled substance, the quantity of the controlled substance, the presence of equipment used in the processing or sale of controlled substances, and large amounts of cash or weapons.

The government must prove, beyond a reasonable doubt, that Defendant Steven J. Kelly intended to distribute the controlled substance alleged in the indictment.

**INSTRUCTION NO.22**

If any reference by the Court or by the attorneys to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.



### **INSTRUCTION NO.23**

Your decision should not be determined by the number of witnesses testifying for or against a party. You should consider all the facts and circumstances in evidence to determine which of the witnesses you choose to believe or not believe. You may find that the testimony of a smaller number of witnesses on one side is more credible than the testimony of a greater number of witnesses on the other side.

#### **INSTRUCTION NO.24**

The defendant in a criminal case has an absolute right under our Constitution not to testify.

The fact that the defendant did not testify must not be discussed or considered by the jury in any way when deliberating and in arriving at your verdict. No inference of any kind may be drawn from the fact that a defendant decided to exercise his privilege under the Constitution and did not testify.

As stated before, the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or of producing any evidence.

### **INSTRUCTION NO.25**

The rules of evidence ordinarily do not permit the opinion of a witness to be received as evidence. An exception to this rule exists in the case of expert witnesses. A person who, by education, study, and experience, has become an expert, and who is called as a witness, may give his or her opinion as to any such matter in which he or she is versed and which is material to the case.

You are not bound, however, by such an opinion. You should judge expert opinion testimony just as you judge any other testimony. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if in your judgment the reasons given for it are unsound.

### **INSTRUCTION NO.26**

You have heard the testimony of law enforcement officers. The fact that a witness may be employed as a law enforcement officer does not mean that his or her testimony is necessarily deserving of more or less consideration or greater or lesser weight than that of an ordinary witness. It is your decision, after reviewing all of the evidence, whether to accept the testimony of the law enforcement witness and to give to that testimony whatever weight, if any, you find it deserves.

### **INSTRUCTION NO.27**

The Indictment charges that the count was committed "on or about" certain dates and within ranges of certain dates. Although it is necessary for the government to prove beyond a reasonable doubt that the offenses were committed reasonably near the dates alleged, it is not necessary for the government to prove that the offense was committed precisely on the dates charged.

### **INSTRUCTION NO.28**

At times throughout the trial the Court may have been called to rule whether or not certain offered evidence might be admitted. Whether offered evidence is admissible is purely a question of law. Neither the weight of the evidence nor the credibility of the witness is involved in such rulings. You are not to consider evidence offered but not received nor any evidence stricken by the Court.

## **INSTRUCTION NO.29**

You are not to be concerned with the legality or illegality of any search by law enforcement officers. That is a matter exclusively within the province of the Court.

### **INSTRUCTION NO.30**

The punishment provided by law for the offense charged in the Indictment is a matter exclusively within the province of the Court, and should never be considered by the jury in any way in arriving at an impartial verdict as to the guilt or innocence of the accused.



### **INSTRUCTION NO.31**

If I have said or done anything in this case that makes it appear I have an opinion about the guilt or innocence of the defendant, disregard it. You are the sole judges of the facts and should in no way be influenced by what I have done here except to follow my instructions on the law. Nothing said in these instructions and nothing in any form of verdict prepared for your convenience is meant to suggest or convey in any way or manner any intimation as to what verdict I think you should find. What the verdict shall be is the sole and exclusive duty and responsibility of the jury.

### **INSTRUCTION NO.32**

Upon retiring to the jury room, you should first select one of your members to act as your foreperson who will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience.

You will take the verdict form to the jury room and when you have reached a unanimous agreement as to your verdict, the foreperson will write the unanimous answer of the jury in the space provided for in the single count of the indictment, either not guilty or guilty. At the conclusion of your deliberations, the foreperson should date and sign the verdict.

### **INSTRUCTION NO.33**

With regard to Count I, if you find that the government has proven beyond a reasonable doubt the three elements I have just described to you, then there is one more issue that you must decide. I have provided you with a special verdict form asking you, if you find the defendant guilty, to fill in a second question concerning the amount of methamphetamine that the defendant intended to distribute. The burden is on the government to establish the amount of drugs beyond a reasonable doubt. Remember, you should address this issue and complete the form only if you find the first three elements to have been established. If you did not find that the government has proven all three elements, then do not complete the second question on the form. If you find the defendant not guilty, fill out only the first question.

### **INSTRUCTION NO.34**

To reach a verdict, all of you must agree. Your verdict must be unanimous. Your deliberations will be secret. You will never have to explain your verdict to anyone.

It is your duty to consult with one another and to deliberate in an effort to reach agreement if you can do so. Each of you must decide the case for yourself, but only after an impartial consideration of the evidence with your fellow jurors. During your deliberations, do not hesitate to reexamine your own opinions and change your mind if convinced that you were wrong. But do not give up your honest beliefs as to the weight or effect of the evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Remember at all times, you are judges, judges of facts. Your sole interest is to seek the truth from the evidence in the case, to decide whether the government has proved the defendant guilty beyond a reasonable doubt.

Bear in mind that you are never to reveal to any person, not even to the Court, how the jury stands, numerically or otherwise, until after you have reached a unanimous verdict.

### **INSTRUCTION NO.35**

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by a Court security officer, signed by your foreperson or by one or more jurors. No member of the jury should attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of the jury on any subject touching the merits of the case, otherwise than in writing or orally here in open Court.

You will note from the oath the Court security officer will take that he, as well as any other person, is also forbidden to communicate in any way with any juror about any subject touching the merits of the case.

AUG 30 2006

MARKUS B. ZIMMER, CLERK  
BY                       
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, NORTHERN DIVISION

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UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case #: 1:05CR00153
	:	
vs.	:	JUDGMENT OF FORFEITURE
	:	
TYWONE DAVIS,	:	
	:	JUDGE Tena Campbell
Defendant.	:	
	:	
	:	

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IT IS HEREBY ORDERED that:

1. As a result of a plea of guilty to Count 2 of the Superseding Indictment for which the government sought forfeiture pursuant to 18 U.S.C. § 924(d)(1), the defendant Tywone Davis shall forfeit to the United States all property, real or personal, that is derived from, used, or intended to be used in violation of 18 U.S.C. § 922(g)(1), including but not limited to:

- Taurus .38 Special Revolver, Serial # SK88826

2. The Court has determined that based on a guilty plea of Possession of a Firearm by a Convicted Felon, that the above-named property is subject to forfeiture, that the defendant had an interest in the property, and that the government has established the requisite nexus between such property and such offense.

IT IS FURTHER ORDERED:

3. Pursuant to Fed. R. Crim. P. 32.2(b)(3), the Preliminary Order of Forfeiture is made final as to the defendant and the Judgment of Forfeiture shall be made part of the sentence and included in the judgment.

4. Any petition filed by a third party asserting an interest in the subject property shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's acquisition of the right, title, or interest in the subject property, any additional facts supporting the petitioners claim and relief sought.

5. After the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A) and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Criminal Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

6. The United States shall have clear title to the subject property following the Court's disposition of all third party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853 which is incorporated by 18 U.S.C. § 982(b) for the filing of third party petitions.

7. The Court shall retain jurisdiction to enforce this Order, and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

Dated this 30 day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Tena Campbell", is written over a horizontal line.

TENA CAMPBELL, Judge  
United States District Court

FILED  
DISTRICT OF UTAH  
U.S. DISTRICT COURT  
2006 AUG 29 P 4:44

DISTRICT OF UTAH


BY: \_\_\_\_\_  
DEPUTY CLERK

## ORDER TO SHOW CAUSE

## ORDER TO SHOW CAUSE

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## ORDER TO SHOW CAUSE

  
SAMUEL ALBA  
Chief U.S. Magistrate Judge



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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

SANTIAGO SOSA-ACOSTA,

Defendant.

ORDER EXTENDING TIME FOR FILING  
NOTICE OF APPEAL

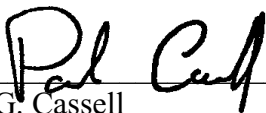
Case No. 1:06-CR-2 PGC

Based on defendant's motion to extend time for filing notice of appeal, and good cause appearing,

IT IS HEREBY ORDERED that the time for defendant to file a notice of appeal in this matter is extended until July 18, 2006.

DATED this 30th day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Paul G. Cassell  
United States District Judge

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

**United States District Court  
for the District of Utah**

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**United States District Court  
for the District of Utah**

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Jay Barnes (9874)  
Bradford D. Myler (7089)  
Attorney for Plaintiff  
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Orem, UT 84097  
Telephone: (801) 225-6925  
Facsimile: (801) 225-8417

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:35  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

JACKIE LYNN SCHMITT,

Plaintiff,

v.

JO ANNE BARNHART  
CURRENT COMMISSIONER  
OF THE SOCIAL SECURITY  
ADMINISTRATION,

Defendant,

CIVIL ACTION NO.  
1:06-cv-74

SCHEDULING ORDER

The Court establishes the following scheduling order:

1. The answer of the Defendant is on file.
2. Plaintiff's brief should be filed by November 10, 2006.
3. Defendant's answer brief should be filed by December 11, 2006.
4. Plaintiff may file a reply brief by December 26, 2006.

DATED this 31<sup>st</sup> day of August 2006.

BY THE COURT:

  
\_\_\_\_\_  
United States District Court Judge

LARRY R. LAYCOCK (USB No. 4868)  
DAVID R. WRIGHT (USB No. 5164)  
ROBYN L. PHILLIPS (USB No. 7425)  
WORKMAN NYDEGGER  
1000 Eagle Gate Tower  
60 East South Temple  
Salt Lake City, UT 84111  
Telephone: (801) 533-9800

FILED **RECEIVED**  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:09  
AUG 28 2006  
DISTRICT OF UTAH  
OFFICE OF  
JUDGE TENA CAMPBELL  
BY: \_\_\_\_\_  
DEPUTY CLERK

Attorneys for Plaintiff  
ICON HEALTH & FITNESS, INC.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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ICON HEALTH & FITNESS, INC.,

Plaintiff,

v.

KEYS FITNESS, INC., a Texas  
corporation, and KEYS BACKYARD,  
LP, a Texas Company

Defendants.

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Civil Action No. 1:06CV00087TC

**ORDER EXTENDING  
THE TIME FOR DEFENDANTS TO  
FILE ANSWER**

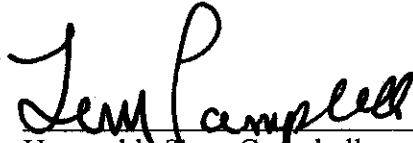
Judge Tena Campbell

Having reviewed the Stipulation to Extend Time for Defendants to File Answer filed by the parties and whereas the parties have agreed to extend the time for Defendants Keys Fitness, Inc. and Keys Backyard, LP (collectively "Defendants") to answer or otherwise respond to the Complaint filed by Plaintiff ICON Health & Fitness Inc. ("ICON"), and for good cause shown:

**IT IS HEREBY ORDERED** that Defendants may have up to and including September 12, 2006, in which to file its Answer or otherwise respond to Plaintiff's Complaint.

DATED this 30 day of August, 2006.

**BY THE COURT**

By:   
Honorable Tena Campbell  
United States District Court

Submitted by:

WORKMAN | NYDEGGER

By /s/ Robyn L. Phillips

Larry R. Laycock  
David R. Wright  
Robyn L. Phillips

Attorneys for Plaintiff  
ICON HEALTH & FITNESS, INC.

FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH

AUG 31 2006

BY MARKUS B. ZIMMER, CLERK  
DEPUTY CLERK

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

JONES WALDO HOLBROOK &  
MCDONOUGH, a Utah Professional  
Law Corporation,

Plaintiff

ORDER FOR PRO HAC VICE ADMISSION

v.

DAVID G. CADE, an individual; and  
THE UNITED STATES OF AMERICA,  
ET AL.,

Judge Paul G. Cassell

Case No. 2:01-CV-00933 PGC

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Harold A. Chamberlain in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 31<sup>st</sup> day of Aug., 2006.

  
U.S. District Judge



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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff

vs.

MERRILL SCOTT & ASSOCIATES, LTD.,  
et al.,

Defendants.

ORDER REGARDING PRETRIAL  
CONFERENCE

2:02 CV 39

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On August 17, 2006, the Securities and Exchange Commission filed a request for a pretrial conference (dkt. #730). The court has reviewed that request and agrees that a conference is advisable to address the status of this litigation and to set a course for reaching a final resolution of all matters.

The court has scheduled a hearing for September 20, 2006, at 3:30 p.m. At that hearing the court will explore available options for resolving claims to assets of the receivership estate, including the possibility of addressing those claims in conjunction with proceedings to resolve the objections raised to the SEC's proposed plan of partial distribution (dkt. #471). Additionally, the court will discuss the status of SEC's claims against Patrick M. Brody and Michael G. Licopantis.

At the September 20, 2006 hearing, the court will set any necessary hearings, impose deadlines, or alter preexisting deadlines, as needed.

SO ORDERED this 31st day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

SHARON PRESTON (7960)  
Attorney for Defendant  
716 East 4500 South, Suite N142  
Salt Lake City, UT 84107  
Telephone (801) 269-9541

FILED  
U.S. DISTRICT COURT

2006 AUG 21 10 11 AM  
**RECEIVED**

DISTRICT AUG 21 2006

BY: ~~CLERK~~ OFFICE OF  
JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUSTIN PETERSON,

Defendant.

)  
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) ORDER  
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Case No. 2:03-CR-821

Judge Tena Campbell

Based on Defendant's motion and consent of the government, the competency hearing in this matter is continued and will commence on the 11<sup>th</sup> day of September, 2006,

at 3:30 a.m./p.m.

IT IS ORDERED this 24 day of August, 2006.

BY THE COURT:

Tena Campbell  
JUDGE TENA CAMPBELL

Benjamin A. Hamilton (#6238)  
Attorney for Defendant  
10 West Broadway, Suite 800  
Salt Lake City, Utah 84101  
Telephone: (801) 322-3622  
Facsimile: (801) 433-0660

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 11:20

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA,	:	
	:	STIPULATED ORDER OF
Plaintiff,	:	TEMPORARY RELEASE,
	:	FOR STACEY ALYNE BENNETT
-v-	:	
STACEY ALYNE BENNETT,	:	
	:	Case No. 2:03-CR-0871-TS
Defendant.	:	Judge Ted Stewart

COMES now the court and hereby orders and instructs the United States Marshall's office of the district of Utah, to immediately release the above named defendant from custody. The defendant is ordered to return and surrender himself to the United States Marshall's office no later than 8:30 a.m. on Tuesday, September 5, 2006.

DATED this 31 day of August, 2006.

BY THE COURT:

STIPULATED TO BY:

  
Linda Krauss

  
Honorable TED STEWART  
Federal District Court Judge

BRETT L. TOLMAN, United States Attorney (#8821)  
CARLIE CHRISTENSEN, Assistant United States Attorney (#0633)  
JARED BENNETT, Assistant United States Attorney (#9097)  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 524-5682

FILED  
DISTRICT COURT

2006 AUG 31 A 10: 35

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

CHARLES M. DUFFY (*Pro Hac Vice*)  
JUSTIN S. KIM (*Pro Hac Vice*)  
Trial Attorneys, Tax Division  
United States Department of Justice  
555 4th Street, NW  
Washington, DC 20001  
Telephone: (202) 307-6406  
Telephone: (202) 307-0977

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION


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BARRICK RESOURCES (USA) INC.	)	
	)	Civil Nos. 2:03CV01006DB & 2:04CV1116DB
Plaintiff/Counter-defendant,	)	(consolidated cases)
	)	
vs.	)	[PROPOSED] ORDER GRANTING THE
	)	UNITED STATES LEAVE TO FILE
UNITED STATES OF AMERICA,	)	SURREPLY TO BARRICK RESOURCES
	)	(USA) INC.'S REPLY
Defendant/Counter-claimant.	)	
	)	

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Based on the United States' Motion for Leave to File Surreply to Barrick Resources (USA) Inc.'s Reply, it is hereby ORDERED that the United States file and serve a surreply no later than September 6<sup>th</sup>, 2006.

DATED this 30<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
THE HONORABLE DEE BENSON  
CHIEF JUDGE  
UNITED STATES DISTRICT COURT

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 28th day of August, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following: Jean A. Pawlow, [jpawlow@milchev.com](mailto:jpawlow@milchev.com); Dennis P. Bedell, [dbedell@milchev.com](mailto:dbedell@milchev.com); Francis M. Wikstrom, [ecf@parsonsbehle.com](mailto:ecf@parsonsbehle.com); and Sharrieff Shah, [sharrieff@sjatty.com](mailto:sharrieff@sjatty.com); and I hereby certify that I have mailed by U.S. Postal Service the foregoing to the following non CM/ECF participants: None.

/s/ Justin S. Kim  
JUSTIN S. KIM  
Trial Attorney, Tax Division  
United States Department of Justice

BRETT L. TOLMAN, United States Attorney, (#8821)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
Attorneys for the United States of America  
348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:43  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TODD TURNER,

Defendant.

**ORDER TOLLING TIME UNDER THE  
SPEEDY TRIAL ACT**

Case No. 2:04 CR 047 DB

Magistrate Judge Samuel Alba

IT IS HEREBY ORDERED that the time up to the jury trial now set for October 30-November 2, 2006, is tolled under the Speedy Trial Act, pursuant to 18 U.S.C. §3161(h)(1)(F), based upon the appearance of new counsel and the need for additional time for them to become acquainted with the facts of the case.

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this 30<sup>th</sup> of August, 2006.

BY THE COURT:



SAMUEL ALBA  
U.S. MAGISTRATE JUDGE

United States District Court  
for the District of Utah

**Request and Order for Modifying Conditions of Supervision**  
**With Consent of the Offender**  
*(Waiver of hearing attached)*

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10: 27

DISTRICT OF UTAH

Name of Offender: **Charles Nathan Arrington**

Docket Number: **2:04-CR-00048-001-DAK**

Name of Sentencing Judicial Officer: **Honorable Dale A. Kimball, United States District Judge**

Date of Original Sentence: **October 13, 2004**

Original Offense: **Felon in Possession of a Firearm**

Original Sentence: **30 Months Imprisonment; 36 Months Supervised Release**

Type of Supervision: **Supervised Release**

Supervision Begins: **September 23, 2006**

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**PETITIONING THE COURT**

To modify the conditions of supervision as follows:

The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

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**CAUSE**

The above-named offender wishes to relocate to Reno, Nevada, to reside with his wife upon his release from the custody of the Federal Bureau of Prisons on September 23, 2006. The Office of Probation in the District of Nevada has agreed to assume supervision of the case. Due to the offender's criminal history, which includes robbery, firearms, and controlled substance offenses, the Office of Probation in the District of Nevada has requested that a condition permitting warrantless searches be added as a special condition of supervised release.

I declare under penalty of perjury that the foregoing is true and correct.

*Zachary C. McBride*

Zachary C. McBride, U.S. Probation Officer

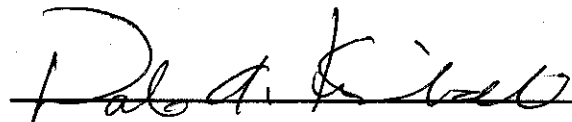
Date: August 30, 2006

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**THE COURT ORDERS:**

- ☒ The modification of conditions as noted above  
☐ No action  
☐ Other

  
\_\_\_\_\_  
Honorable Dale A. Kimball  
United States District Judge

Date: August 30, 2006

**UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
PROBATION AND PRETRIAL SERVICES OFFICE**

**WAIVER OF RIGHT TO HEARING PRIOR TO  
MODIFICATION OF CONDITIONS OF SUPERVISION**

I have been advised by United States Probation Officer Zachary C. McBride that he/she has submitted a petition and report to the Court recommending that the Court modify the conditions of my supervision in Case No.2:04-CR-00048-001-DAK. The modification would be:


The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the probation office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.

I understand that should the Court so modify my conditions of supervision, I will be required to abide by the new condition(s) as well as all conditions previously imposed. I also understand the Court may issue a warrant and revoke supervision for a violation of the new condition(s) as well as those conditions previously imposed by the Court. I understand I have a right to a hearing on the petition and to prior notice of the date and time of the hearing. I understand that I have a right to the assistance of counsel at that hearing.

Understanding all of the above, I hereby waive the right to a hearing on the probation officer's petition, and to prior notice of such hearing. I have read or had read to me the above, and I fully understand it. I give full consent to the Court considering and acting upon the probation officer's petition to modify the conditions of my supervision without a hearing. I hereby affirmatively state that I do not request a hearing on said petition.

  
\_\_\_\_\_  
Charles Nathan Arrington

  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Witness: Zachary C. McBride  
United States Probation Officer

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

PARIS ALANIS-SAMANO,  Petitioner,  vs.  UNITED STATES OF AMERICA,  Respondent	BY: _____ DEPUTY CLERK  ORDER  Case No. 2:06-CV-682 TC Criminal Case No. 2:04 CR 343 TC
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On August 16, 2006, federal prisoner Paris Alanis-Samano filed a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255.<sup>1</sup> Mr. Alanis-Samano presents several issues for review. For the reasons set forth below, the court does not have subject matter jurisdiction over Mr. Alanis-Samano's §2255 Motion.

**DISCUSSION**

On August 24, 2004, Mr. Alanis-Samano pleaded guilty to one count of illegal re-entry of a deported alien (8 U.S.C. § 1326). On November 29, 2004, Mr. Alanis-Samano was sentenced to thirty-seven months of confinement and thirty-six months of supervised release following release from confinement. (Judgment filed December 1, 2004) On July 21, 2005, Mr. Alanis-

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<sup>1</sup>In the August 16, 2006 Petition, movant identifies himself as Alanis Samano. However, in previous court records, specifically the underlying criminal case (2:04 CR 343) and the previous civil case brought under 28 U.S.C. § 2255 (2:05 CV 617), the movant is identified as Paris Alanis-Samano.

Samano filed a petition under § 2255 seeking correction of the very same sentence he now seeks to have corrected. (See July 21, 2005 Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody, Case No. 2:05 CV 617-TC (Docket Entry No. 1).) The court denied that petition. (See August 2, 2005 Order, Case No. 2:05 CV 617-TC (Docket Entry No. 2).)

Mr. Alanis-Samano's §2255 Motion currently before the court is a "successive petition."

[1] The Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 (1996), amends 28 U.S.C. §§2244 and 2255, altering the procedures for filing habeas petitions under §2254 and §2255 motions. The statutes now require a movant who seeks to file a second or successive motion to first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. §§2244(b)(3), 2255.

If the movant does not obtain leave from the appropriate court of appeals before filing his successive §2255 Motion, the district court lacks subject matter jurisdiction over the claim.

United States v. Torres, 282 F.3d 1241, 1246 (10th Cir. 2002). The Tenth Circuit has held that "when a second or successive petition for habeas corpus relief under § 2254 or a § 2255 motion is filed in the district court without the required authorization by this court, the district court should transfer the petition or motion to this court in the interest of justice pursuant to [28 U.S.C.] § 1631." Coleman, 106 F.3d at 341.

Mr. Alanis-Samano's §2255 Motion is not accompanied by any authorizing order from the Tenth Circuit Court of Appeals. Accordingly, this court lacks subject matter jurisdiction over his claim. His §2255 Motion must be transferred to the appropriate court of appeals, in this case the Tenth Circuit.

**ORDER**

For the foregoing reasons, the Clerk of the Court is directed to transfer this case to the Tenth Circuit Court of Appeals.

DATED this 30th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2006 AUG 31 A 9:51

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

DEER CREST ASSOC, et al

Plaintiffs,

vs.

DEER CREST RESORT GROUP, et al,  
Defendants.

TRIAL ORDER

Civil No. 2:04-CV-00220-TS

The final pretrial conference in this matter is scheduled for August 31, 2006, at 2:30 p.m.

This case is set for a 5-day bench trial to begin on September 8, 2006, at 8:30 a.m.

Counsel are instructed as follows:

**1. Court-Imposed Deadlines.**

The deadlines described in this order cannot be modified or waived in any way by a stipulation of the parties. Any party that believes an extension of time is necessary **must** make an appropriate motion to the court.

**2. Pretrial Order.**

At the final pretrial conference, plaintiff is to file a joint proposed pretrial order which has been approved by all counsel. The pretrial order should conform generally to the requirements of DuCivR 16-1 and to the approved form of pretrial order which is reproduced as Appendix IV to the Rules of Practice for the U.S. District Court for the District of Utah.

### **3. Findings of Fact and Conclusions of Law**

At the conclusion of all non-jury trials, counsel for each party will be instructed to file with the court proposed findings of fact and conclusions of law. The date of submission will vary, depending upon the need for and availability of a transcript of trial and the schedule of court and counsel. Findings of fact should be supported, if possible, by reference to the record. For that reason, the parties are urged to make arrangements with Ms. Patti Walker, the Court Reporter, for the preparation of a trial transcript. Conclusions of law must be accompanied by citations to supporting legal authority.

The proposed findings of fact and conclusions of law should be submitted to chambers both in hard copy and on a 3.5" high density computer diskette formatted for WordPerfect 6.1 through 8.0.

### **4. Trial Briefs**

Each party should file a Trial Brief no later than five business days before trial.

### **5. Motions in Limine**

All motions in limine are to be filed with the court **at least five business days before trial**, unless otherwise ordered by the court. Each such motion shall specifically identify the relief sought, and shall be accompanied by a memorandum of law and a proposed order. No brief in support of, or in opposition to, such motion shall be longer than three (3) pages in length.

### **6. Exhibit Lists/Marking Exhibits**

All parties are required to prepare an exhibit list for the court's use at trial. The list contained in the pretrial order will not be sufficient; a separate list must be prepared. Plaintiffs should list their exhibits by number; defendants should list their exhibits by letter. Standard forms for exhibit lists are available at the clerk's office, and questions regarding the preparation of these lists may be directed to the courtroom deputy, Sandy Malley at 524-6617. All parties are required to pre-mark their exhibits to avoid taking up court time during trial for such purposes.

### **7. In Case of Settlement**

If the case is settled, counsel must advise a member of the court's staff by means of a

personal visit or by person-to-person telephonic communication.

## **8. Courtroom Conduct**

In addition to the rules outlined in DUCivR 43-1, the court has established the following ground rules for the conduct of counsel at trial:

(a) Please be on time for each court session. In most cases, trial will be conducted from 8:30 a.m. until 1:30 p.m., with two short (fifteen minute) breaks. Trial engagements take precedence over any other business. If you have matters in other courtrooms, arrange in advance to have them continued or have an associate handle them for you.

(b) Stand as court is opened, recessed or adjourned.

(c) Stand when addressing, or being addressed by, the court.

(d) In making objections and responding to objections to evidence, counsel should state the legal grounds for their objections with reference to the specific rule of evidence upon which they rely. For example, "Objection . . . irrelevant and inadmissible under Rule 402." or "Objection . . . hearsay and inadmissible under Rule 802."

(e) Counsel need not ask permission to approach a witness in order to **briefly** hand the witness a document or exhibit.

(f) Address all remarks to the court, not to opposing counsel, and do not make disparaging or acrimonious remarks toward opposing counsel or witnesses. Counsel shall instruct all persons at counsel table that gestures, facial expressions, audible comments, or any other manifestations of approval or disapproval during the testimony of witnesses, or at any other time, are absolutely prohibited.

(g) Refer to all persons, including witnesses, other counsel, and parties, by their surnames and NOT by their first or given names.

(h) Only one attorney for each party shall examine, or cross-examine, each witness. The attorney stating objections during direct examination shall be the attorney recognized for cross examination.

(i) In opening statements and arguments to the court, counsel shall not



express personal knowledge or opinion concerning any matter in issue. The following examples would be improper: "I believe the witness was telling the truth" or "I found the testimony credible."

(j) When not taking testimony, counsel will remain seated at counsel table throughout the trial unless it is necessary to move to see a witness. Absent an emergency, do not leave the courtroom while court is in session. If you must leave the courtroom, you do not need to ask the court's permission. Do not confer with or visit with anyone in the spectator section while court is in session. Messages may be delivered to counsel table provided they are delivered with no distraction or disruption in the proceedings.

DATED this 31<sup>st</sup> day of August, 2006

BY THE COURT:

A handwritten signature in black ink, appearing to read "Stewart", written over a horizontal line.

TED STEWART  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 31 P 3:09

DISTRICT CLERK

BY: \_\_\_\_\_  
DEPUTY CLERK

Dan R. Larsen (4865)  
Scott C. Rosevear (9953)  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101-1004  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800

*Attorneys for Deer Crest Associates I, L.C.*

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**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF UTAH, CENTRAL DIVISION**

---

DEER CREST ASSOCIATES I, L.C., a Utah  
Limited Liability Company,

Plaintiff,

v.

DEER CREST RESORT GROUP, L.L.C., a  
Delaware Limited Liability Company;  
AVALON DEER VALLEY, L.L.C., an  
Oregon Limited Liability Company;  
WILLAMETTE LANDING  
DEVELOPMENT, INC., an Oregon  
Corporation; and A. PAUL BRENNEKE, an  
individual,

Defendants.

**FINAL PRETRIAL ORDER**

**Civil No. 2:04CV00220 TS**

**Honorable Judge Ted Stewart**

---

This matter having come before the Court on August 31, 2006, at a final pretrial conference before the Honorable Ted Stewart, pursuant to Fed. R. Civ. P. 16; and Dan R. Larsen and Scott C. Rosevear having appeared as counsel for plaintiff Deer Crest Associates I, L.C. ("DCA"), and Paxton Guymon and Joel Zenger having appeared as counsel for defendants Avalon Deer Valley, L.L.C. ("Avalon"), Willamette Landing Development, Inc. ("Willamette") and A. Paul Brenneke ("Brenneke") (Avalon, Willamette and Brenneke are collectively referred to as "Defendants"), the following action was taken:

1. **Jurisdiction.** This is an action for breach of contract, unjust enrichment, declaratory relief and damages. Jurisdiction of the Court is invoked under 28 U.S.C. § 1332. The jurisdiction of the Court is not disputed and is hereby determined to be present.

**Venue.** Venue was determined by the Court to be proper pursuant to 28 U.S.C. § 1391. Venue is laid in the District Court.

2. **General Nature of the Claims of the Parties.**

**DCA's Claims:** DCA claims that Defendants have breached the Operating Agreement, that Defendants have been unjustly enriched as a result of their breaches of the Operating Agreement, and that Brenneke has breached the Personal Guarantee. DCA claims that it is entitled to a judgment: (1) awarding DCA damages in the amount of \$1,401,503.83, plus pre- and post-judgment interest thereon; (2) declaring that Defendants are responsible to indemnify DCA and to pay for all soft costs incurred on behalf of the Project during the term of the Operating Agreement (3) declaring that Defendants have no right, title or interest in the Deer Crest Project; (4) permanently enjoining Defendants from interfering with DCA's access and rights to develop the Deer Crest Project; and (5) awarding DCA its attorney fees and costs expended in this matter.

**Defendants' Claims:** Defendants claim that DCA has breached the implied covenant of good faith and fair dealing inherent in the Operating Agreement. Defendants assert that DCA is not entitled to a judgment against Defendants in the amounts sought, and that Defendants are entitled to offsets against any amounts owing to DCA.

**Uncontroverted Facts.** The following facts are established by admissions in the pleadings, by order pursuant to Fed. R. Civ. P. 56(d), or by stipulation of counsel:

- (a) DCA and Avalon were the two (2) members of Defendant Deer Crest Resort Group, LLC ("DCRG").

(b) In 2001, DCRG was created as the operating entity for the development of a high-end, mixed use project known as Deer Crest, containing condominium units, a world-class hotel, and private resort residences (the "Deer Crest Project" or the "Project"). The property of the Deer Crest Project is located in Summit County and Wasatch County, Utah.

(c) DCA and Avalon agreed to develop and construct the Deer Crest Project together as part of a joint venture defined by the Operating Agreement. DCA's role was principally that of land owner, and Avalon and Mr. Brenneke's role was principally that of developer.

(d) The Operating Agreement provided for certain "milestones" and "options" at which the parties could either terminate their relationship or continue the relationship and their development and construction of the Deer Crest Project.

(e) One such option was set forth in Section 4.1(a) of the Operating Agreement, and is referred to therein as the "Second Year Option." It provides:

On or before May 15, 2002, Avalon shall notify DCA whether it elects to continue with the Project (the "Second Year Option"). . . . If Avalon cannot or does not timely elect the Second Year Option or should it notify DCA that it will not exercise the option, Avalon shall only be entitled to recover those costs set forth in Section 3.8(a)(i) which are actually funded by Avalon prior to the date Avalon fails to exercise the option or otherwise notifies DCA that it will not exercise the option. . . .

[Operating Agreement § 4.1(a)].

(f) In addition, Section 11.2 of the Operating Agreement states that "this Agreement may be terminated . . . upon Avalon's election to terminate this Agreement prior to a Parcel I Closing or failure to timely exercise the Second Year Option." (Operating Agreement § 11.2(a)(iii)). In order to complete termination of the Operating Agreement, Section 11.2(b) states that a "closing" had to occur which required, among other things: (a) DCA to indemnify Avalon against any "hard" construction costs

pursuant to § 3.8(a) up to a cap of \$2.5 million dollars: (b) Avalon to sell all of its right in Deer Crest Resort Group ("DCRG"), the Property or the Deer Crest Project (the "Project") to DCA pursuant to § 3.8(a) subject to the same \$2.5 million dollar cap specified above, which amount was payable within 90 days of Avalon transferring its interest in DCRG to DCA; (c) Avalon to indemnify DCA for all costs and expenses incurred by any Avalon party for the Project, either directly or indirectly, including all "soft" costs and professional fees; (d) Avalon to execute and deliver such instruments as are necessary to evidence that Avalon has no further interest in the Project, the Property or DCRG, to assign to DCA any permits or entitlements obtained by Avalon for DCRG at no cost to DCA, and to assign to DCA all of Avalon's materials relating to the Project, the Property or DCRG, (e) Avalon to unconditionally release all liens and encumbrances on any asset of DCA in which Avalon had a lien or encumbrance, and (f) Avalon to terminate its Memorandum of Option. (Operating Agreement § 11.2(b)). The full text of these provisions is set forth in Sections 3.8(a) and 11.2(b) of the Operating Agreement.

(g) The Operating Agreement also states that on the first day of each calendar month following the Execution Date, except as otherwise specified, "the Avalon Parties or the Company shall pay directly, or reimburse DCA promptly for" certain "Carrying Costs" which consist of "all real property taxes, special taxes, bonds and assessments, liability and property insurance, rent and similar charges accruing under the Lease Agreements, homeowners' association fees and dues, utilities, deposits and water, sewer electricity and gas charges which accrue or are incurred for the preceding calendar month in connection with each parcel." (Operating Agreement § 3.7(a)).

(h) The Operating Agreement also provided that the obligation concerning payment of the carrying costs "shall continue until this Agreement is terminated pursuant

to Article 11.1 or until the subject Parcel is contributed to [DCRG].” (Operating Agreement § 3.7(a)).

(i) The Operating Agreement provides for other milestones to be satisfied by the Company or Avalon, including, without limitation, the following: (i) that the Company enter into a hotel management agreement for the Project on or before May 16, 2002 (Operating Agreement § 4.1(h)(i)(D)(aa)); (ii) that the Company effect the closing of the Phase I Development Loan and fund \$15 million in equity on or before May 16, 2002 (Operating Agreement § 4.1(h)(i)(D)(bb)); (iii) that the Avalon Parties shall have funded, directly or through the Company, at least \$1.5 million to pay the expenditures set forth in Section 3.7 of the Operating Agreement on or before May 16, 2002 (Operating Agreement § 4.1(h)(i)(D)(cc)); (iv) that all plans and applications be filed on or before May 15, 2002 that are necessary to obtain certain construction permits (Operating Agreement § 4.1(h)(i)(C)); and (v) that the Company enter into a letter of intent with a hotel operator or manager by December 31, 2001 (Operating Agreement §3.6).

(j) The Operating Agreement provides that if Defendants failed to meet the milestones set forth in the Operating Agreement, “such failure shall be considered a default by Avalon (although, except in the case of monetary defaults, it will not be subject to Damages) and should it fail to timely cure such default within the time periods specified in Section 11.2, DCA may elect to terminate this Agreement with respect to Parcel I pursuant to Section 11.2.” (Operating Agreement § 4.1(i)).

(k) Also according to the Operating Agreement, “[t]he Avalon Parties’ sole right and remedy in the event this Agreement is terminated prior to a Parcel I Closing for any reason shall be limited to receiving payment in the amounts set forth in Section 3.8 to which it is entitled, and exercising its rights and remedies under the Avalon Deed of Trust.” (Operating Agreement § 3.8(b)(ii)).

(l) Section 3.8(a)(i) of the Operating Agreement states: "If this Agreement is terminated prior to a Parcel I Closing pursuant to Section 11.1 or 11.2 for any reason other than DCA's failure to convey Parcel I to the Company when required to do so, DCA shall be obligated to pay to Avalon an amount equal to the unreimbursed, third party, out-of-pocket costs actually funded by Avalon for "hard" construction costs directly allocable to the Project from the Effective Date through the date Avalon notifies DCA that it has elected to terminate this Agreement, and DCA shall be obligated to indemnify Avalon against and hold it harmless from all such costs which have been incurred by Avalon and for which it is liable, provided all such costs are consistent with the Approved Budget and Approved Plan and do not exceed \$2,500,000 in the aggregate." (Operating Agreement Section 3.8 (a)(i)).

(m) Section 11.4 of the Operating Agreement sets forth the liquidation procedures to be followed upon the occurrence of any terminating event specified in Section 11.1, which, as set forth in Section 11.1(f), includes "the termination of the Company pursuant to Section 11.2(a) (unless DCA elects to acquire all of the Units of Avalon or its successor pursuant to Section 11.2(b))."

(n) The Operating Agreement states that Defendants were obligated to fund to DCRG "any amount" required to complete construction of the Saleable Inventory and Non-Saleable Inventory for the Phase in question. It also states that, "[s]ubject to DCA's obligation, the Avalon Parties shall indemnify and hold DCA harmless from all costs and expenses incurred by any Avalon Party. . . ." (Operating Agreement §§ 3.3; 11.2(b)).

(o) Section 5.2(a)(i) of the Operating Agreement states that "Avalon shall fund the obligations set forth in Sections 3.7(a), (b), (c), (e) and (f), and 4.1(h)(i)(A)(aa) and (cc) which are incurred or otherwise due and payable prior to the termination of the Agreement.

(p) Section 3.9 of the Operating Agreement states that "The Avalon Parties may incur and pay reasonable, third-party, out-of-pocket expenses directly attributable to the Property or the Project. Unless otherwise consented to by the Managers, such expenses shall be incurred in accordance with the Company's applicable expense reimbursement guidelines and shall be reimbursed by the Company from distributable cash prior to the company making any distribution to the members. Except for the overhead fee and the incentive fee, the Avalon Parties shall not be reimbursed for their formation costs, the costs of obtaining equity or debt funding, and internal, overhead or indirect costs, including employee salaries and benefits, rent, office expenses, travel, lodging, meals, entertainment, business insurance, the costs of internal staff and similar expenses.

(q) Section 11.5(b) of the Operating Agreement sets forth certain procedures to be followed for the delivery to DCA of the "Avalon Materials" following termination of the Operating Agreement.

(r) Section 13.11 of the Operating Agreement states that "This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of contracts of law; provided, however, that any disputes directly involving the project of the property and not governed by the terms of this agreement shall be governed by the laws of the state of Utah.

(s) Section 13.18 of the Operating Agreement states that "All rights and remedies of the Parties pursuant to this Agreement are cumulative with one another and with any other rights or remedies that may be available at law or in equity. . .

"[T]ermination of this Agreement shall not be deemed a waiver of the defaulting Party's breach and the other Parties shall be entitled to all appropriate relief at law or in equity."



(t) In late 2001 and early 2002, Avalon was unable to close on a construction loan and mezzanine financing envisioned by the business plan and pro-forma, which was necessary to continue the development and construction of the Deer Crest Project from conceptual design to an actual construction project.

(u) Despite these setbacks, Avalon and DCA made efforts to move the Project forward.

(v) On January 8, 2002, Avalon sent a letter stating that it was terminating the Operating Agreement. Following January 8, 2002, Defendants continued to try to move the Project forward.

(w) In order to facilitate the commencement of construction on the Project, Avalon, Willamette and DCA entered into the Bud Bailey Letter Agreement on January 16, 2002. The Bud Bailey Letter Agreement essentially provided that any amounts paid by DCA to Bud Bailey for hard construction costs would reduce, on a dollar-for-dollar basis, DCA's obligation to reimburse Avalon for up to \$2.5 million of such "hard" costs under Section 3.8 of the Operating Agreement.

(x) Thereafter, the parties signed a Memorandum of Understanding, dated February 8, 2002 (the "MOU"). The MOU, if determined to be a binding agreement, amended various provisions of the Operating Agreement.

(y) The MOU contemplated that a First Amendment to the Operating Agreement ("First Amendment") would be entered into by the parties. However, a First Amendment to the Operating Agreement was never finalized or executed. DCA received the Personal Guarantee of Paul Brenneke which was dated May 14, 2002, which was purportedly executed by Paul Brenneke. The guarantee provides that Brenneke guaranteed and promised to pay to DCA the obligations of Defendants under the

Operating Agreement, the MOU and the Amended and Restated Operating Agreement which was never executed.

(z) On September 3, 2002, Avalon executed a term sheet with Lehman Brothers for equity financing of the Resort Project. The term sheet expired after the 30-day due diligence period, and no formal extension of time was requested or granted.

(aa) Defendants did not obtain \$15 million of equity financing for the Project. A closing of the Phase I Development Loan did not occur. Defendants also did not obtain a binding hotel management agreement with the Hotel Operator on or before March 31, 2002.

(bb) Section 13.4 of the Operating Agreement requires all notices under the Operating Agreement to be in writing.

(cc) Following May 16, 2002, Defendants continued to incur expenses in relation to the Project.

(dd) On October 4, 2002, DCA sent Defendants a Notice of Default of the terms of the Operating Agreement. The letter set forth the various monetary and non-monetary defaults alleged by DCA and notified Defendants that failure to cure these alleged defaults within the applicable time periods would result in termination of the Operating Agreement.

(ee) On February 25, 2003, Defendants sent DCA a letter in response to the October 4, 2004 Notice of Default. Defendants objected to many of the grounds on which DCA had declared a default and alleged that DCA, too, had defaulted on certain terms of the Operating Agreement.

(ff) On March 5, 2003, prior to a Parcel I Closing, DCA sent its Notice of Termination of the Operating Agreement. The Notice declared that the Operating

Agreement had been terminated and requested a winding up as contemplated by the Operating Agreement.

(gg) On March 25, 2003, Defendants sent their own Termination Letter in which they purported to terminate the Operating Agreement.

(hh) All parties to this action and the Operating Agreement agree that the Operating Agreement has been terminated, although they dispute when, how, and by whom the termination occurred. All parties also agree that the termination and winding up procedures, including without limitation the "closing," contemplated under the Operating Agreement have not been completed.

3. **Contested Issues of Fact.** The main contested issues of fact are as follows:

- (a) Whether the Operating Agreement was terminated on January 8, 2002, May 15, 2002, or March 5, 2003.
- (b) Whether DCA is entitled under the Operating Agreement to \$1,401,503.83, or some lesser amount, plus pre- and post-judgment interest thereon and attorney fees and costs as damages for Defendants' alleged breaches of the Operating Agreement.
- (c) Whether Mr. A. Paul Brenneke is personally liable under the Brenneke Guaranty for the amounts of any judgment entered in favor of DCA, and, if so, the amount of the personal liability.
- (d) Whether Defendants are entitled to any offsets to any amounts allegedly owed to DCA.
- (e) Whether DCA breached the implied covenant of good faith and fair dealing inherent in the Operating Agreement, and, if so, the amount of damages to which Defendants are entitled as a result.

4. **Contested Issues of Law.** The contested issues of law are:

- (a) Whether Defendants breached the Operating Agreement.
- (b) Whether the MOU is a binding agreement, and, if so, whether Defendants breached its terms.
- (c) Whether Defendants were unjustly enriched by asserting or retaining any rights or interest in the design, architectural plans, development or property relating to the Deer Crest Project. For purposes of trial, Defendants do not
- (d) Whether Brenneke breached the Personal Guarantee thereby entitling DCA to damages as pleaded for by DCA.
- (e) Whether DCA breached the implied covenant of good faith and fair dealing thereby entitling Defendant to damages as pleaded for by Defendants.

5. **Exhibits.**

**Joint Stipulated Exhibits.** The following exhibits are jointly offered by the parties and their admissibility is hereby stipulated:

NO.	DESCRIPTION
1.	Master Declaration of Covenants, Restrictions and Reservation of Easements for Deer Crest, a Planned Recreational Development dated October 31, 1997
2.	Planning Commission Report dated December 6, 2000 from Kirsten Whetstone regarding Rosewood Hotel at Deer Crest CUP (Avalon 1502-1508)
3.	Planning Commission Report dated December 12, 2000 from Kirsten Whetstone regarding Rosewood Hotel at Deer Crest CUP (Avalon 1509-1513)
4.	Planning Commission Report dated January 1, 2001 from Kirsten Whetstone to Planning Commission regarding Rosewood Hotel at Deer Crest CUP (Avalon 1452-1470)

5.	Planning Commission Report dated January 24, 2001 from Kirsten Whetstone to Planning Department (Avalon 1481-1501)
6.	Planning Commission Report dated February 28, 2001 from Kirsten Whetstone (Avalon 1471-1480)
7.	Conditional Use Permit dated March 1, 2001 (Avalon 1244 -1251, 1257)
8.	E-mail dated March 16, 2001 from Angela Sabella to Paul Brenneke regarding Deer Crest and developing the Rosewood Hotel at Roosevelt Gap/Snow Park in Deer Crest (AVALON 1790-1791)
9.	E-mail dated March 19, 2001 from Lynda Boone Fetter to Paul Brenneke regarding a master document Angela wanted Paul to have (AVALON 1792-1794)
10.	E-mail dated April 7, 2001 from Doug to Paul regarding Deer Crest SDC fees (AVALON 1795-1799)
11.	E-mail dated May 10, 2001 from Glynda Mekonen to Paul Brenneke regarding Deer Crest (AVALON 1800-1808)
12.	Operating Agreement of Deer Crest Resort Group, LLC effective June 14, 2001 (DCRG 00325-00421)
13.	Notice of Planning Commission Action dated July 27, 2001 for Amendment to the Conditional Use Permit (Avalon 1252-1254)
14.	E-mail dated August 4, 2001 from Phil Keb to Paul Brenneke regarding Seattle and Deer Crest (AVALON 1810)
15.	E-mail dated October 3, 2001 from Gary Frey to Paul Brenneke regarding Deer Crest and the long program to HKS (AVALON 1812-1824)
16.	Professional Agreement Between Owner (Deer Crest Resorts Group) and Consultant (HKS Architects) dated October 9, 2001 (AVALON 0161-0192)
17.	E-mail dated October 10, 2001 from Phil Keb to Paul Brenneke regarding Deer Crest and the pro-forma and corresponding program for the 172 room RC Deer Crest. (AVALON 1825-1829)
18.	Professional Agreement Between Owner (Deer Crest Resorts Group) and Consultant (Construction Management and Development, Inc. (CM&D)) dated October 10, 2001 (DCRG 01391-01420)
19.	Professional Agreement Between Owner (Deer Crest Resorts Group) and Consultant (Psomas) dated October 25, 2001 (DCRG 01421-01435)
20.	Professional Agreement Between Owner (Deer Crest Resorts Group) and Consultant (SWA Group) dated November 6, 2001 (AVALON 0393-0407)

21.	Planning Commission Report dated December 12, 2001 re approval of Affordable Housing Plan (Avalon 1404-1406, 1420-1424)
22.	Memo dated December 13, 2001 from Gary Frey to Mike Menefee regarding The Ritz-Carlton, Deer Crest Conceptual Design (AVALON 0087-0090)
23.	Memo dated December 26, 2001 from Robert Simon to Paul Brenneke regarding Change Order for Bud Bailey Contract (AVALON 1231-1235)
24.	Letter dated January 8, 2002 from Robert Simon to DCA regarding Notice of Termination of Operating Agreement Deer Valley Resort Group LLC (Brenneke Depo Exhibit 4)
25.	Bud Bailey Letter Agreement dated January 16, 2002 (DCRG 00043-00047)
26.	Professional Agreement Between Owner (Deer Crest Resorts Group) and Consultant (Encompass Electrical Technologies) dated January 28, 2002 (DCRG 01501-01520)
27.	February 8, 2002 Memorandum of Understanding (DCRG 00048-00056 & 00058-00066)
28.	Exhibit A from Fourth Declaration of Gregson M. Perry: Draft "Amended and Restated Operating Agreement of Deer Crest Resort Group, LLC" dated February 2002 (Unexecuted)
29.	Exhibit D from Fourth Declaration of Gregson M. Perry: E-mails dated February 14, 2002 and February 19, 2002 from Thomas Nicholson to Robert regarding Amended and Restated Agreement
30.	Professional Agreement between Owner and Consultant: Henricksen Design Associates, Inc. dated February 2, 2002 (Avalon 0458-0487)
31.	Correspondence dated March 5, 2002 from Bob Beauchemin to Matt Goff re the UP&L Power Line Relocation Agreement (Avalon 0707-0718)
32.	Correspondence dated April 4, 2002 from Bob Beauchemin to Matt Goff re signed UP&L Dual Transformer Letter (Avalon 0676-0677)
33.	E-mail dated April 15, 2002 from Mark Wilson to Robert & Paul regarding Deer Crest – Hotel Management Agreement (AVALON 1811)
34.	E-mail dated April 15, 2002 from Mark Wilson to Robert & Paul regarding Deer Crest Revised Draft Technical Services Agreement (AVALON 1834)
35.	E-mail dated April 16, 2002 from Glynda Mekonen to Paul Brenneke regarding Deer Crest and the revised Design Program (AVALON 1835-1846)

36.	Exhibit C to the Second Declaration of Gregson M. Perry: July 11, 2002 E-mail regarding a draft of the First Amendment to the Operating Agreement (DCRG 01874)
37.	E-mail dated August 21, 2002 from John Chaloner to Paul regarding talking to Lehman and there being no CFO for the project (DCRG 01842)
38.	September 3, 2002 Lehman Brothers Term Sheet (DCRG 01851-01852)
39.	E-mail dated September 4, 2002 from Robert Simon to Greg Perry regarding execution of Deer Crest – Lehman Term Sheet (DCRG 01841)
40.	Letter dated October 4, 2002 from DCA to Defendants in which Angela Sabella, on behalf of DCA, set forth Defendants' various monetary and non-monetary defaults under the Operating Agreement and warned that failure to cure those defaults within the applicable time periods would result in termination of the Operating Agreement (DCRG 01344-01345)
41.	Correspondence dated October 10, 2002 through October 14, 2002 between Gregson M. Perry, Paul Brenneke and Robert Simon regarding financing (DCRG 1857-1859)
42.	Correspondence dated October 11, 2002 from Scott Sterlaker to Bob Beauchemin regarding Deer Crest (0979-0987)
43.	E-mail dated October 14, 2002 from Wilson Chen to Bob Leeds regarding Carrying costs and other indebtedness of Deer Crest Resort Group LLC and/or Avalon to DCA (DCRG 01860)
44.	Emails and attachments dated October 14, 2002 (DCRG 1860-1865)
45.	Correspondence dated October 15, 2002 from Mike Dustin to Don Taylor re relocation of JSSD Water main at Roosevelt Gap (Avalon 0752)
46.	E-mail dated October 15, 2002 between Robert Simon and Greg Perry regarding status of Lehman and potential default notices to Avalon (DCRG 01832-01833)
47.	Correspondence dated October 16, 2002 from Mike Dustin to Dan Matthews regarding relocation of the water line (Avalon 0751)
48.	E-mail dated November 26, 2002 from Greg Perry to Robert Simon regarding status of deal with Rosewood (DCRG 01864)
49.	E-mail dated December 2, 2002 from Doug to Paul regarding Deer Crest base estimate for the Water SDC and the Deer Crest Water Bond obligation (AVALON 1858-1865)
50.	Letter dated December 3, 2002 from Paul Brenneke to Steve Kramer of CCI regarding amounts owed to CCI (AVALON 0624-0637)

51.	E-mails dated December 10, 2002 between Robert Simon and Kitty Lew regarding Lehman not being interested in Deer Crest (DCRG 01854)
52.	Letter dated December 14, 2002 from Robert Simon to Gregson Perry (DCRG 1856)
53.	E-mail dated January 6, 2003 from Greg Perry to Robert Simon regarding Avalon's plans regarding the Hotel (DCRG 01853)
54.	Letter dated February 25, 2003 from Robert Simon to Gregson Perry
55.	Exhibit C to the Third Declaration of Gregson M. Perry: Letter dated March 5, 2003 from DCA to Defendants in which DCA terminated the Operating Agreement for Defendants' failure to timely cure the defaults set forth in the October 4, 2002 letter (DCRG 01349-01351)
56.	Exhibit D to the Third Declaration of Gregson M. Perry: Letter dated March 25, 2003 from Defendants to DCA in which Defendants purported to terminate the Operating Agreement (DCRG 01339-01340)
57.	Letter dated April 11, 2003 from DCA to Defendants responding to February 25, 2003 letter from Defendants (DCRG 01358-01364)
58.	Letter dated May 9, 2003 from Greg Perry to Paul Brenneke and Robert Simon regarding Termination of Operating Agreement of Deer Crest Resort Group, LLC (Brenneke Depo Exhibit 24)
59.	Copy of check from Deer Crest Associates I, LC to Crescent Consulting in the amount of \$3,000.00 dated October 21, 2003 (DCRG 01368)
60.	Letter dated November 7, 2003 from Dan Larsen to Paul Brenneke regarding Notice of Compromise, Settlement Agreement and Release of all claims with Bud Bailey (Brenneke Depo Exhibit 26)
61.	Copy of check from Deer Crest Associates I, LC to Bud Bailey in the amount of \$1,200,000.00 dated November 14, 2003 (DCRG 01370)
62.	Letter dated November 26, 2003 from Robert Simon to Dan Larsen regarding Avalon's status as member of Deer Crest Resort Group (DCRG 00001-00002)
63.	Letter dated December 2, 2003 from Paul Brenneke to IBI Group demanding a stop of work (DCRG 00175)
64.	Copy of check from Deer Crest Associates I, LC to Crescent Consulting in the amount of \$5,086.63 dated December 17, 2003 (DCRG 01375)
65.	Copy of check from Deer Crest Associates I, LC to Bud Bailey in the amount of \$1,200,025.00 dated January 20, 2004 (DCRG 01377-01378)



66.	Appeal of Final Action of Planning Commission dated April 1, 2004 (Avalon 1608-1609)
67.	Park City council Staff Report dated June 3, 2004 regarding Appeal of Planning Commissions March 24, 2004 Decision Approving Modifications to the Deer Crest Conditional Use Permit (Brenneke Depo Exhibit 30)
68.	Exhibit 18 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Checks attest DCA paid a default judgment in the amount of \$62,284.10 to Psomas and Associates Corp. (DCRG 01369; 01374; 01376)
69.	Exhibit 19 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoices and checks attest DCA paid a total of \$60,000.00 to Taylor Electric, Inc. (formerly Encompass Electric) for electrical design work for the Project. (DCRG 01521-01528; 01477; 01387-01388)
70.	Exhibit 20 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Checks attest DCA paid a total of \$30,000.00 to Henriksen Design Associates for interior design work incurred by Defendants for the Project. (DCRG 01372)
71.	Exhibit 21 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Check demonstrates DCA paid a total of \$50,025 to SWA Group, Inc. for landscape design incurred by Defendants for the Project. (DCRG 01389-01390)
72.	Exhibit 23 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Check demonstrates DCA paid a total of \$60,000.00 to Construction Management and Development Inc. for construction management services performed on the Project. (DCRG 01379)
73.	Exhibit 24 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Check demonstrates DCA paid a total of \$3,971.25 to Construction Control Corp. for construction management services incurred by Defendants for the Project. (DCRG 01500)

**Plaintiff's Exhibits.** In addition to the jointly stipulated exhibits, the following will be offered into evidence by DCA:

NO.	DESCRIPTION
1.	Exhibit B from Fourth Declaration of Gregson M. Perry: Unconditional and Continuing Guaranty of A. Paul Brenneke executed May 14, 2002

2.	Exhibit A to Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Spreadsheet showing the five parcels that are part of the Project: the Roosevelt Gap Hotel Development A Parcel (4.97 acres); the Roosevelt Gap Hotel Development B Parcel (4.28 acres); the Open Space Parcel (10.34 acres); the Open Space Parcel (40.05 acres); and the Snow Park Parcel (34.64 acres)
3.	Exhibit 1 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Property Tax assessment and checks from May 1, 2001 to March 3, 2003 that DCA incurred and paid a total of \$69,965.21 in property taxes on the Roosevelt Gap Hotel Development A Parcel (4.97 acres).
4.	Exhibit 2 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Property Tax assessments and checks demonstrate from May 1, 2001 to March 4, 2003 that DCA incurred and paid a total of \$60,251.75 in property taxes on the Roosevelt Gap Hotel Development B Parcel (4.28 acres).
5.	Exhibit 3 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Property Tax assessments and checks demonstrate from May 1, 2001 to March 4, 2003 that DCA incurred and paid a total of \$1,566.23 in property taxes on the Open Space Parcel (10.34 acres).
6.	Exhibit 4 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Property Tax assessments and checks demonstrate from May 1, 2001 to March 4, 2003 that DCA incurred and paid a total of \$2,839.91 in property taxes on the Open Space Parcel (40.05 acres).
7.	Exhibit 5 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Property Tax assessments and checks demonstrate from May 1, 2001 to March 4, 2003 that DCA incurred and paid a total of \$1,562.31 in property taxes on the Snow Park Parcel (34.64 acres).
8.	Exhibit 6 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: 2002 fiscal year, DCA incurred and paid a total of \$70,000.00 in rent on the four State leases.
9.	Exhibit 7 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: May 1, 2001 to March 4, 2003 DCA incurred and paid a total of \$35,086.30 in homeowners' association fees for the Project.

10.	Exhibit 8 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoices and checks attest that DCA incurred and paid a total of \$23,174.79 in county assessments for the Wasatch County Fire Station
11.	Exhibit 9 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoice and check attest that DCA incurred and paid a total of \$17,622.36 in assessments payable to the Jordanelle Special Service District for water rights for the Snowpark Parcel.
12.	Exhibit 10 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoice and check attest that DCA incurred and paid a total of \$18,775.73 in other water rights assessments from May 1, 2001 until the end of 2001 to Jordanelle Special Service District.
13.	Exhibit 11 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoices and checks attest that DCA incurred and paid a total of \$36,080.05 in other water rights assessments from January 2002 to March 3, 2003 to Jordanelle Special Service District.
14.	Exhibit 12 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Insurance invoices and checks – demonstrates how the amount of insurance charges allocable to the project were calculated.
15.	Exhibit 13 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoices and checks attest that DCA incurred and paid a total of \$13,134.82 in fees and costs for the final ALTA survey and certificates.
16.	Exhibit 14 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Checks and statements demonstrate DCA incurred and paid a total of \$556.62 for the letter of credit in 2002 and another \$556.62 for the letter of credit in 2003.
17.	Exhibit 15 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Billing statements and checks attest DCA incurred and paid a total of \$20,000.00 in legal fees payable to Gibson Dunn & Crutcher and \$4,372.50 in legal fees payable to Stoel Rives for the activities described in the MOU.
18.	Exhibit 16 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Spreadsheet attest a total of \$385,356.99 in interest on all accrued and unpaid carrying costs has accrued under the MOU §2.B provision through May 2, 2006.

19.	Exhibit 17 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Checks and invoices attest DCA paid a total of \$75,000.00 to CCI Mechanical, Inc. for mechanical systems for the hotel at the Project (DCRG 01373, 01554-01555, 01557)
20.	Exhibit 22 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Invoices and checks demonstrate DCA paid a total of \$257,000 to HKS Architects, Inc. for architectural design work incurred by Defendants for the Project (DCRG 01381-01386)
21.	Exhibit 25 to the Spreadsheet which is Exhibit A to the Declaration of Vasant Tangkanangnukul, aka Wilson Chen: Spreadsheet shows amounts that Defendants, in an invoice sent to DCA, have claimed they incurred on behalf of the Project but for which DCA does not have record of paying. These potential unpaid invoices amount to a total of \$135,358.15.
22.	Black Diamond Agreement

The following may be offered into evidence by DCA.

1.	A demonstrative exhibit illustrating a timeline of the key events in this case.
2.	A demonstrative exhibits excerpting portions of the Operating Agreement.
3.	A demonstrative exhibit summarizing the claimed damages.
4.	Firm resume of Dynamic Holdings.
5.	A demonstrative exhibit showing hotel design.
6.	Any exhibit identified by Defendants.

**Defendant's Exhibits.** The following may be offered into evidence by

Defendants:

NO.	DESCRIPTION
1.	April 19, 2002 Proposal from Dynamic Finance to Paul Brenneke re Terms for Subordinate Debt on Home Depot Pad Site, Portland, Oregon
2.	April 30, 2002 Spreadsheet, Status of Due, Paid & Unpaid Invoices, Payments to Date, and Proposed Usage of \$500K Loan Fund & Two Month Projected Cost (as of April 30, 2002)
3.	May 2002 Agreement of Unconditional Guaranty among Sherwood HD LLC, Avalon Deer Valley LLC, A. Paul Brenneke, and Dynamic Financing Corp.

4.	May 1, 2002 Proposal from Dynamic Finance to Paul Brenneke re Terms for Subordinate Debt on Home Depot Pad Site, Portland, Oregon
5.	May 14, 2002 Promissory Note for Revolving Credit Line between Sherwood HD, LLC, Avalon Deer Valley, LLC and Dynamic Financing Corp.
6.	May 15, 2002 Email from R. Simon to A. Sabella Re: May 14, 2002 e-Mail to Paul Brenneke
7.	June 3, 2002 Revised Closing Statement
8.	December 6, 2002 Letter Gregson M. Perry to R. Simon Re: Dynamic Finance Loan to Sherwood HD
9.	Expense Spreadsheets, attached as Exhibit G to June 22, 2006 Declaration of A. Paul Brenneke
10.	Spreadsheet – Deer Crest Resort – Phase 1 2 Month Case Flow Projections
11.	Any exhibit identified in Plaintiff's Rule 26(a)(3) Pretrial Disclosures
12.	Deer Crest Invoice Summary, Deposition Exhibit 50

Exhibits received in evidence and placed in the custody of the Clerk may be withdrawn from the Clerk's office upon signing of receipts therefore by the respective parties offering them. The exhibits shall be returned to the Clerk's office within a reasonable time and in the meantime shall be available for inspection at the request of other parties.

Exhibits identified and offered that remain in the custody of the party offering them shall be made available for review by the offering party to any other party to the action that requests access to them in writing.

Except as otherwise indicated, the authenticity and admissibility of received exhibits has been stipulated that they have been received subject to objections, in any, by any opposing party at the trial as to their relevancy and materiality. If other exhibits are to be offered, the necessity of which reasonably cannot now be anticipated, they will be submitted to opposing counsel at least seven days prior to trial.

6. **Witnesses.**

In the absence of reasonable notice to opposing counsel to the contrary, DCA will call as witnesses:

1. Angela C. Sabella;
2. Gregson M. Perry;
3. Vasant Tangkanangnukul, aka Wilson Chen; and
4. A. Paul Brenneke.

In the absence of reasonable notice to opposing counsel to the contrary, DCA may call as witnesses:

1. Robert Simon;
2. Robert Beauchemin;
3. Mark W. Taylor;
4. Nick Thomas;
5. Kirsten Whetstone;
6. Steve Kramer;
7. David Grubb, Jr.; and
8. Ray Mikulich.

In the absence of reasonable notice to opposing counsel to the contrary, Defendants will call as witnesses:

1. Paul Brenneke
2. Robert Simon
3. Angela Sabella
4. Gregson M. Perry
5. Vasant Tangkanangnukul, aka Wilson Chen

In the absence of reasonable notice to opposing counsel to the contrary, Defendants may call as witnesses:

1. Doug Campbell
2. Robert Beauchemin
3. Mark Taylor
4. Scott Sterleker
5. Mark Thornburg
6. George Diamond
7. Terrence Bean
8. Any witnesses identified by DCA

In the event that witnesses other than those listed are to be called to testify at the trial, a statement of their names, addresses, and the general subject matter of their testimony will be served upon opposing counsel and filed with the Court at least seven days prior to trial. This restriction shall not apply to rebuttal witnesses whose testimony, where required, cannot reasonably be anticipated before the time of trial.

7. **Amendments to Pleadings:** By minute entry dated April 11, 2006, this court granted Defendants' Motion for Leave to File Amended Answer and Counterclaim to include a cause of action for breach of the implied covenant of good faith and fair dealing against Defendants. The remainder of Defendants' claims for relief against DCA have been dismissed, and the Court denied Defendants' Rule 54(b) motion to certify as final the order dismissing such other claims for purposes of appeal.

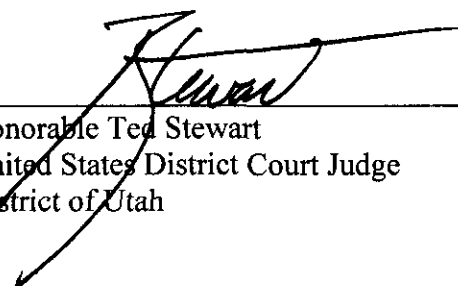
8. **Discovery:** Discovery has been completed.

9. **Trial Setting:** The case was set for a 5-day trial without a jury beginning on September 18, 2006 at 8:30 o'clock a.m. in Salt Lake City, Utah.

10. **Possibility of Settlement:** The possibility of settlement is considered poor.

DATED this 31<sup>st</sup> day of August, 2006.

BY THE COURT:



Honorable Ted Stewart  
United States District Court Judge  
District of Utah

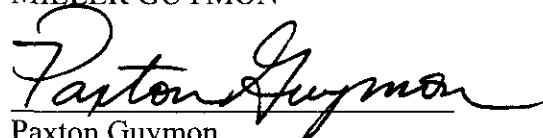
APPROVED AS TO FORM AND CONTENT:

SNELL & WILMER, L.L.P.



Dan R. Larsen  
Attorney for Plaintiffs

MILLER GUYMON



Paxton Guymon  
Attorney for Defendants



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

INTERNET MARKETING SOLUTIONS,  
INC.,

Plaintiff,

vs.

STANDARD REGISTER & TRANSFER  
COMPANY, INC., et al.,

Defendants.

ORDER

Case No. 2:04 CV 401

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In an order dated September 12, 2005, (dkt. #48), the court conditionally granted Defendant Anscott Industries, Inc.'s motion to set aside a previously entered default certificate and judgment. The granting of that motion was contingent upon Anscott's payment of the attorney fees incurred by Internet Marketing Solutions in obtaining the default certificate and judgment. Counsel for Internet Marketing Solutions submitted an accounting of the fees incurred. Anscott objected to that accounting, claiming that it lacked sufficient specificity. Counsel for Internet Marketing Solutions filed a response defending the previously filed accounting and requesting payment for additional fees that were necessitated by responding to Anscott's objections.

The court has reviewed the accounting submitted and the objection thereto and finds the fee claimed by Internet Marketing Solutions's counsel to be fair and reasonable under the circumstances. Accordingly, the court orders Anscott to pay counsel for Internet Marketing Solutions \$1094.00 within ten days. Upon payment of the attorney fees, the default certificate

and default judgment against Anscott will be set aside.

DATED this 31st day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**Michael Robert Barker,**  
  
**Plaintiff,**  
  
**vs.**  
  
**UTAH STATE OFFICE OF**  
**EDUCATION et al.,**  
  
**Defendants.**

**ORDER DENYING MOTION TO  
RECONSIDER**

**Case No. 2:04CV518 DAK**

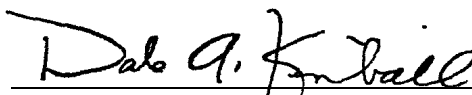
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This matter is before the court on Plaintiff's Motion to Reconsider Amended Order Adopting Report and Recommendation. After receiving Plaintiff's objections to the Report and Recommendation, this court, on September 21, 2005, issued an Amended Order, which adopted the Magistrate Judge's Report and Recommendation. Plaintiff subsequently filed further objections to the Report and Recommendation and also filed a Motion to Reconsider the court's Amended Order.

Again, the court has reviewed the file in its entirety, including the untimely submissions by Plaintiff. The court declines to reconsider its Amended Order dated September 21, 2005, and therefore Plaintiff's Motion to Reconsider [docket # 32] is DENIED.

DATED this 31<sup>st</sup> day of August, 2006.

BY THE COURT:



DALE A. KIMBALL  
United States District Judge

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

ADAM MERCE, an individual, and EMILY  
DEMONG, an individual,

Plaintiffs,

vs.

MARK W. GREENWOOD, M.D.; DAVID  
M. POPE, M.D.; KIRK R. ANDERSON,  
M.D.; IHC HEALTH SERVICES, INC., a  
Utah Corporation, dba SEVIER VALLEY  
HOSPITAL; and IHC HEALTH SERVICES,  
INC., a Utah Corporation dba UTAH  
VALLEY REGIONAL MEDICAL CENTER,

Defendants.

ORDER TO SHOW CAUSE

Case No. 2:04-CV-00610 PGC

This matter was originally set for a fifteen-day jury trial (#26) beginning on November 27, 2006. Subsequent to that scheduling order, the court ordered the matter bifurcated, with the trial of liability and damages issues to occur separately (#52). It was the court's impression that, once the liability issues were determined, that the parties might be well positioned to resolve any remaining damages issues on their own.

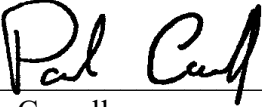
The parties are HEREBY ORDERED TO SHOW CAUSE why the fifteen-day jury trial beginning November 27, 2006, should not be stricken and why this matter should not be reset for a seven-day jury trial beginning on December 7, 2006, limited to the issue of liability. The court

directs the plaintiffs to file their position on this issue by September 16, 2006. The defendants shall file their position on this issue by September 23, 2006.

SO ORDERED.

Dated this 28th day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Paul G. Cassell  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

ADAM MERCE, et al.  Plaintiff(s),  vs.  MARK W. GREENWOOD, et al.  Defendant(s).	<b>ORDER FOR SETTLEMENT CONFERENCE</b>  Case No: 2:04-CV-610 PGC  District Judge Paul G. Cassell  Magistrate Judge David Nuffer
--	---

Pursuant to the order of the district judge this case is set for a settlement conference before the undersigned on Tuesday, September 19, 2006, from 9:00 a.m. through 1:00 p.m. in the ADR Suite, Room 405, at the U.S. Courthouse, 350 South Main Street, Salt Lake City, UT.

**IT IS HEREBY ORDERED:**

**Participation of Parties:** Each party or, in the case of an entity, a representative with full settlement authority, must be physically present and participate in the settlement conference for the entire time period. Counsel must also be present.

**Case Status Report:** Counsel shall meet and confer and at least ten (10) days before the settlement conference, the parties shall deliver an agreed **case status report** directly to the Magistrate Judge at [mj.nuffer@utd.uscourts.gov](mailto:mj.nuffer@utd.uscourts.gov) or Room 483, U.S. Courthouse, 350 South Main Street, Salt Lake City, UT 84101. The agreed case status report shall include the following:

1. A brief statement of the facts of the case;
2. A brief statement of the claims and defenses, i.e., statutory or other grounds

upon which the claims are founded, and relief sought;

3. A brief statement of the facts and issues upon which the parties agree and a description of the major issues in dispute; a
4. A summary of relevant proceedings to date including rulings on motions and motions outstanding; and
5. A certification of counsel that all fact discovery has been completed.

**Confidential Settlement Conference Statement:** At least ten (10) days before the settlement conference, each party shall separately lodge with the Magistrate Judge a **confidential settlement conference statement** including:

1. A forthright evaluation of the party's likelihood of prevailing on the claims and defenses;
2. An estimate of the cost and time to be expended for further discovery, pretrial and trial;
3. Identification of any discrete issues which, if resolved, would aid in the settlement of the case; and
4. The party's position on settlement, including present demands and offers and history of past settlement discussions, offers and demands.

The **confidential settlement conference statement** should be delivered directly to the Magistrate Judge. Copies of the **confidential settlement conference statement** shall not be filed with the Clerk of the Court, nor served upon the other parties or counsel. The Court and its personnel shall not permit other parties or counsel to have access to these **confidential settlement conference statements**.

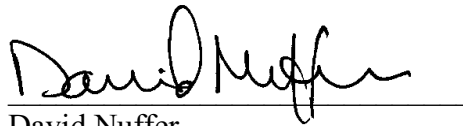
**Confidentiality:** No report of proceedings, including any statement made by a party, attorney, or other participants, in the settlement conference may be reported, recorded, placed in evidence, made known to the trial court or jury, or construed for any purpose as an admission

unless otherwise discoverable. Pursuant to DUCivR 16-3(d), a written report for the purposes of informing the referring judge whether or not the dispute has been settled is the only permissible communication allowed with regard to the settlement conference. No party will be bound by anything agreed upon or spoken at the conference except as provided in a written settlement agreement. No participant in the settlement conference may be compelled to disclose in writing or otherwise, or to testify in any proceeding, as to information disclosed or representations made during the settlement conference process, except as required by law.

For questions related to the conference, counsel may contact Michelle Roybal, ADR Administrator, at 801 524 6128.

August 31, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "David Nuffer", is written over a horizontal line.

David Nuffer  
U.S. Magistrate Judge



**L. LONG, #1989**  
L. LONG LAWYER, INC.  
Lawyer for Defendant  
343 South 400 East  
Salt Lake City, UT 84111  
Telephone (801)-322-4666  
Fax (801)-322-4671

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 1:38

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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IN THE UNITED STATES DISTRICT COURT,  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	<b>ORDER ALLOWING</b>
	:	<b>DEFENDANT TO TEMPORARILY</b>
Plaintiff,	:	<b>LEAVE THE STATE OF UTAH</b>
v.	:	
	:	CASE NO. 2:05CR67 DB
ROBERT ELLERTSON,	:	
	:	
Defendant.	:	JUDGE DEE BENSON

---

BASED UPON , Stipulation of Counsel, Motion of Defendant and good cause appearing therefore;

IT IS HEREBY ORDERED that the Defendant, ROBERT ELLERTSON, be allowed to temporarily leave the State of Utah to attend the Fall Landmark Introduction Leadership Program to be held in Denver, Colorado on August 25<sup>th</sup> – 27<sup>th</sup>, 2006.

DATED this 29 day of August, 2006.

BY THE COURT:

  
JUDGE DEE BENSON  
United States District Court

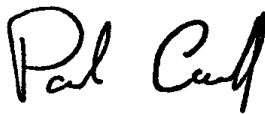
**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH    CENTRAL DIVISION**

<b>USA</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>Shelby Elizabeth Nichols</b> <b>Defendant.</b>	<b>ORDER</b>  <b>Case No. 2:05-cr-00202- PGC</b>
---	--

An Indictment was filed in this case on 03/30/2005. An arrest warrant was issued for the defendant on 06/07/2005 after the defendant failed to respond to a summons. The arrest warrant remains outstanding. There has been no activity in this case for over a year.

IT IS HEREBY ORDERED that the above captioned case filed be **administratively** closed and removed from the list of active pending cases. The case may be reopened upon motion by the Plaintiff or the by Defendant.

Dated this 31st day of August, 2006.



By \_\_\_\_\_  
PAUL G. CASSELL  
United States District Judge

# UNITED STATES DISTRICT COURT

Central

District of

Utah

UNITED STATES OF AMERICA

V.

Kenneth L. Weeks

## JUDGMENT IN A CRIMINAL CASE

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:09

DISTRICT OF UTAH

Case Number: DUTX 2:05CR000240-001

USM Number: 07889-081

DEPUTY CLERK

Walter F. Bugden

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1348	Securities Fraud		1

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/25/2006

Date of Imposition of Judgment



Signature of Judge

Tena Campbell

Name of Judge

U.S. District Court Judge

Title of Judge

8-30-2006

Date

DEFENDANT: Kenneth L. Weeks  
CASE NUMBER: DUTX 2:05CR000240-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

7 Months, which shall run consecutive with Sentence imposed in Case No. DUTX 2:98CR000278-007 TC

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends to the BOP that the defendant serve his sentence at FCI Morgantown, West Virginia.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☒ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☒ before 2 p.m. on 10/6/2006

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Kenneth L. Weeks  
 CASE NUMBER: DUTX 2:05CR000240-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
<b>TOTALS</b>	\$ 100.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

<b>TOTALS</b>	\$ 0.00	\$ 0.00	
---------------	---------	---------	--

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Kenneth L. Weeks  
CASE NUMBER: DUTX 2:05CR000240-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 5 - 8

are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

# UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

FILED  
U.S. DISTRICT COURT  
UTAH

UNITED STATES OF AMERICA

V.

JACOBO JAVIER RIVERA

## JUDGMENT IN A CRIMINAL CASE: 51

Case Number: 205CR000491-001

USM Number: 12752-081

Colleen Coebergh

Defendant's Attorney

### THE DEFENDANT:

☒ pleaded guilty to count(s) 1 and 2 of the Superceding Felony Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC §2252A(a)(5)(B)	Possession of Child Pornography		1 and 2

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/29/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

United States District

Title of Judge

8/29/2006

Date



DEFENDANT: JACOBO JAVIER RIVERA  
CASE NUMBER: 205CR000491-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

240 months

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JACOBO JAVIER RIVERA  
CASE NUMBER: 205CR000491-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

Life

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☒ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JACOBO JAVIER RIVERA  
CASE NUMBER: 205CR000491-001

### **ADDITIONAL SUPERVISED RELEASE TERMS**

The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he/she is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: JACOBO JAVIER RIVERA

CASE NUMBER: 205CR000491-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 200.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ _____ 0.00	\$ _____ 0.00	
--------	---------------	---------------	--

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JACOBO JAVIER RIVERA  
CASE NUMBER: 205CR000491-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 200.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10  
are the

Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

BRETT L. TOLMAN, United States Attorney, (#8821)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642)  
Attorneys for the United States of America  
348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 1:54

DISTRICT OF UTAH

IN THE UNITED STATES DISTRICT COURT

BY: \_\_\_\_\_  
DEPUTY CLERK

DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

TAMARA EVON JONES,

Defendant.

**ORDER TOLLING TIME UNDER THE  
SPEEDY TRIAL ACT**

Case No. 2:05 CR <sup>34</sup>543 TS

Judge Ted Stewart

On March 24, 2006, the Court issued its Memorandum Decision and Order Denying Defendant's Motion to Suppress in which the Court ordered that the time since the filing of the Motion to Suppress through the date of the new trial setting was excluded from the computation of the Speedy Trial Act. A trial date was set for June 5, 2006 and a final pre-trial conference was scheduled for May 22, 2006. On May 22, 2006, the parties appeared in anticipation of the entry of a plea of guilty, however addition time was required by the parties. The trial date was then stricken and a change of plea hearing was set for June 9, 2006. On June 9, 2006, the parties again appeared in anticipation of the entry of a plea of guilty, however the Defendant had changed her mind and the hearing was stricken. The matter was then set for a trial on August 30, 2006, and a final pre-trial conference was set for August 10, 2006. On August 10, 2006, the parties appeared in anticipation of a entry of a plea of guilty, however the Defendant again

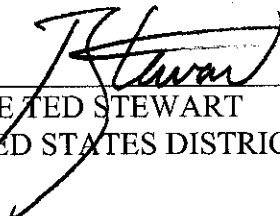
changed her mind and the hearing was stricken. A trial is now set for October 10, 2006 to allow for the government to determine whether a superseding indictment is appropriate in the above mentioned matter.

IT IS HEREBY ORDERED that the time up to the jury trial now set for October 10-12, 2006 is tolled under the Speedy Trial Act, pursuant to 18 U.S.C. §3161(h)(1)(F).

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this 29<sup>th</sup> day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
JUDGE TED STEWART  
UNITED STATES DISTRICT COURT



**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH    CENTRAL DIVISION**

<b>USA</b>  <b>Plaintiff,</b>  <b>vs.</b>  <b>Flavio Andres Mendoza-Lopez</b> <b>Defendant.</b>	<b>ORDER</b>  <b>Case No. 2:05-cr-00570 PGC</b>
--	---

An Indictment was filed 08/03/2005. An arrest warrant was issued for the defendant on 08/04/2005. The arrest warrant remains outstanding. There has been no activity in this case for over a year.

IT IS HEREBY ORDERED that the above captioned case filed be **administratively** closed and removed from the list of active pending cases. The case may be reopened upon motion by the Plaintiff or the by Defendant.

Dated this 31<sup>st</sup> day of August, 2006.



By \_\_\_\_\_  
PAUL G. CASSELL  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 2:46

DISTRICT OF UTAH  
ORDER FOR PSYCHOSEXUAL  
EXAMINATION & TESTING  
BY DEPUTY CLERK

2:05-cr-00752-001-TC

UNITED STATES OF AMERICA

Plaintiff,

FRANK REY LUCERO

Defendant

It appears that psychosexual examination and testing of the defendant is necessary in order that a more complete presentence report may be prepared pursuant to Rule 32(c) of the Federal Rules of Criminal Procedure.

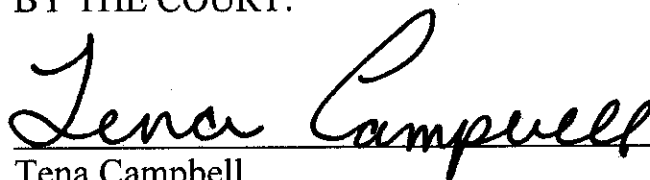
IT IS THEREFORE ORDERED that the defendant submit to an examination conducted by a qualified practitioner as directed by the Probation Office to provide information to the Court pursuant to 5 U.S.C. § 3109.

IT IS FURTHER ORDERED that investigative information may be released to the provider for purposes of testing and evaluation.

IT IS FURTHER ORDERED that the United States Probation Office shall pay all reasonable and necessary expenses from funds allocated for such purposes.

DATED this 30 day of August, \_\_\_\_.

BY THE COURT:



Tena Campbell  
United States District Judge

BRETT L. TOLMAN, United States Attorney, (#8821)  
LANA TAYLOR, Special Assistant United States Attorney (# 7642 )  
Attorneys for the United States of America  
348 East South Temple  
Salt Lake City, Utah 84111  
Telephone: (801) 524-4156

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:43  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID ANDREW MORTENSEN,

Defendant.

: **ORDER TOLLING TIME UNDER THE**  
: **SPEEDY TRIAL ACT**

:  
:  
:  
: Case No. 2:05 CR 822 DB

:  
: Magistrate Judge Samuel Alba  
:  
:  
:


---

IT IS HEREBY ORDERED that the time up to the jury trial now set for October 23-25, 2006, is tolled under the Speedy Trial Act, pursuant to 18 U.S.C. §3161(h)(1)(F), based on the appearance of new counsel and the need for additional time for them to become acquainted with the facts of the case.

The Court specifically finds that the ends of justice will be served by the granting of such continuance and that such action outweighs the best interest of the public and defendant in a speedy trial.

DATED this 30<sup>th</sup> day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
SAMUEL ALBA  
U.S. MAGISTRATE JUDGE

STEVEN B. KILLPACK, Federal Defender (#1808)  
ROBERT K. HUNT, Assistant Federal Defender (#5722)  
**UTAH FEDERAL DEFENDER OFFICE**  
Attorney for Defendant  
46 West Broadway, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010  
Facsimile: (801) 524-4060

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 P 1:58  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

SAUL RAMIRES, aka SAUL RAMIREZ,  
aka RAUL RAMIRES,

Defendant.

**ORDER TO CONTINUE JURY TRIAL**

Case No. 2:05 CR 848 TS

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for September 13, 2006, is stricken and a Change of Plea hearing is scheduled for November 2, 2006 at 3:30 p.m.

Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

DATED this 31<sup>st</sup> day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
HONORABLE TED STEWART  
United States District Court Judge

TODD UTZINGER (6047)  
Attorney for Defendant  
144 North 100 West  
Bountiful, Utah 84010  
Telephone: (801) 397-3131  
Facsimile: (801) 397-3139

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:09  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	ORDER CONTINUING TRIAL DATE
	)	AND EXCLUDING INTERVENING
v.	)	FROM THE SPEEDY TRIAL ACT
	)	CALCULATION
	)	
RAFAEL VILLEGAS,	)	Case No. 2:05-CR-00891 TC
	)	
Defendant.	)	Judge Tena Campbell

This matter is before the Court on defendant's motion to continue his trial now set for June 29, 2006 pending resolution of defendant's request for new counsel. For the reasons stated in defendant's motion and good cause appearing, the Court finds and orders as follows:

1. Defendant has filed a motion seeking the appointment of new defense counsel.
2. That motion, having been filed on the same date as defendant's motion to continue, is still pending.
3. Defendant has authorized counsel to request a continuance during the pendency of his request for new counsel.

4. In the event new counsel is appointed to represent defendant, that new counsel will require adequate time to prepare for trial.

5. Given that defendant has requested new counsel, his current counsel would also need additional time to prepare for trial.

6. Pursuant to Title 18 sec. 3161 (h)(8)(a), the time between the date of this motion and any new trial date is excluded from the Speedy Trial Act calculation because the continuance was required to consider defendant's request for new counsel. Further, in the event new counsel is appointed, that counsel will likely need additional time to prepare for trial. Finally, even assuming new counsel is not appointed, present counsel will need additional time to prepare for trial once defendant is instructed that he must cooperate with counsel and assist him in preparing for trial.

7. The Court finds that the ends of justice served by granting the continuance outweigh the best interests of the public and the defendant in a speedy trial. Specifically, defendant is entitled to have his request for new counsel duly considered prior to trial. If new counsel is appointed, that counsel will need time to properly investigate the case and to prepare for trial. Further, given that defendant will remain in custody based on his state court conviction regardless of whether the continuance is granted or denied, defendant will not be prejudiced by his custodial status and the public's interests in his incarceration pending trial will not be compromised.

SIGNED AND DATED this 30 day of Aug, 2006.

*Tena Campbell*

---

THE HONORABLE TENA CAMPBELL  
Federal District Court Judge, District of Utah

JEREMY M. DELICINO - 9959  
Attorney for Defendant  
10 West Broadway, Suite 650  
Salt Lake City, Utah 84101  
Telephone: (801) 364-6474  
Facsimile: (801) 364-5014

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:09

DISTRICT OF UTAH

BY: DEPUTY CLERK

RECEIVED

AUG 24 2006

OFFICE OF

JUDGE TENA CAMPBELL

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

LARRY STODDARD,

Defendant.

:

:

ORDER

:

:

Case No. 2:05-CR-892 TC

:

The Court having read the foregoing motion and good cause appearing, it is hereby;

ORDERED that the Sentencing in the above matter is continued to this 28 day of

September, 2006, at 330 p.m.

DATED this 28 day of August, 2006.

BY THE COURT:

Tena Campbell

HONORABLE TENA CAMPBELL

United States District Court Judge



**FILED**

**United States District Court**  
**District of Utah**

**AUG 24 2006**

**ROBERT T. BRAITHWAITE**  
**U.S. MAGISTRATE**

**JUDGMENT**

**UNITED STATES OF AMERICA**

**VS.**

**Ryan Nicholson**

**IN A CRIMINAL CASE**

(For Revocation of Probation or Supervised Release)  
(For Offenses Committed On or After November 1, 1987)

Case Number: **2:05-cr-00899-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Doug Terry**

Date of Imposition: **August 24, 2006**

**THE DEFENDANT:**

- ☒ admitted to allegation(s) 1
- ☐ pleaded nolo contendere to  
which was accepted by the court.
- ☐ was found guilty as to

**Violation Number**

**1**

**Nature of Violation**

**Terminated from in-house treatment**

**Date Violation**  
**Occurred**

**06/19/06**

**SENTENCE**

The Court having determined that the defendant violated the terms of probation, hereby orders the defendant's probation revoked and re-stated for a period of 12 months. The defendant shall abide by the original terms of probation and the following additional terms of probation:

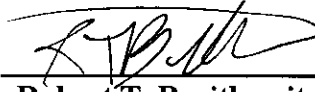
**ADDITIONAL CONDITIONS OF PROBATION**

1. The defendant shall attend treatment as directed by probation and shall comply with their recommendations.

2. The defendant shall comply with all previous conditions of probation.
3. The defendant shall pay the remaining balance of his fine.
4. The defendant shall submit his person, residence, office, or vehicle to a search, conducted by the United States Probation Office at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release; failure to submit to a search may be grounds for revocation; the defendant shall warn any other residents that the premises may be subject to searches pursuant to this condition.
5. The defendant shall not use or possess illegal drugs.

DATE:

8-24-06



**Robert T. Braithwaite**

**United States Magistrate Judge**

---

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

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FILED  
U.S. DISTRICT COURT  
2006 AUG 30 P 1:58  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA, : Case No. 2:05 CR 933 JTG  
Plaintiff, : ORDER ON MOTION TO CONTINUE  
v. :  
CHARLES DENNIS FRIEDMAN, : JUDGE J. THOMAS GREENE  
Defendant. :  
:

---


The above-entitled action came on for pretrial status conference on August 22, 2006, before United States District Court Judge J. Thomas Greene. Defendant, defense counsel and Assistant United States Attorney were present. Based thereon, the following is entered:

1. The defendant's motion to continue the trial date is granted based upon the reasons stated in the defendant's motion and for representations made to the Court.
2. A status conference is set for October 23, 2006 at 2:00 p.m.
3. The defendant's psychological report is due to the Court and plaintiff by noon on October 13, 2006. In light of this pending psychological evaluation, and for other good cause shown, the Court orders the trial continued. Any period of delay until

the rescheduled trial date shall be excluded from the Speedy Trial Act pursuant to  
18 U.S.C. § 3161(h)(8)(A),

Dated this 30 day of August, 2006.


BY THE COURT:

  
\_\_\_\_\_  
J. THOMAS GREENE  
DISTRICT COURT JUDGE

FILED  
U.S. DISTRICT COURT  
2006 AUG 29 P 3:36  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

## Case No. 2:05CV00131 TC

006.



---

Honorable Tena Campbell  
United States District Judge

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

LOUIS JOSEPH MALEK,  
Plaintiff,

vs.

MARY ANN REDING, et al.,  
Defendants.

ORDER GRANTING MOTION TO  
DISMISS

Case No. 2:05-CV-322 PGC

---

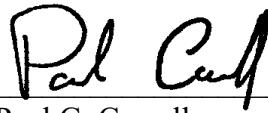
On August 29, 2006, plaintiff Louis Joseph Malek filed a motion to dismiss his claim without prejudice [#31]. According to the court's previous order on August 9, 2006, the court denied Mr. Malek's *in forma pauperis* application [#28]. The court gave Mr. Malek thirty days from August 9, 2006, to pay his full \$250 filing fee or his case would be dismissed without further notice.

Mr. Malek now voluntarily requests the court to dismiss his case without prejudice. The court GRANTS that request and dismisses this case without prejudice [#31]. The Clerk's Office is directed to close this case.

SO ORDERED.

DATED this 30th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell  
United States District Judge

Stacey L. Barnes (Texas # 24006800)  
BARNES & ASSOCIATES, PLLC  
4309 Yoakum, Suite 100  
Houston, TX 77006  
Telephone: (713) 522-9444  
Facsimile: (713) 524-2580

DURHAM JONES & PINEGAR  
J. Mark Gibb (5702)  
111 East Broadway, Suite 900  
Salt Lake City, Utah 84111  
(801) 415-3000  
Attorneys for T. Shelton Powers

FILED  
U.S. DISTRICT COURT  
2006 AUG 29 P 3:38  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

DAVID BROADBENT, as receiver for  
MERRILL SCOTT & ASSOCIATES, LTD.,  
et al,

Plaintiff,

vs.

THOMAS SHELTON POWERS, M.D., et al,

Defendants.

**ORDER GRANTING  
MOTION TO WITHDRAW AS  
COUNSEL FOR T. SHELTON POWERS**

Civil No. 2 05CV-375C  
Judge Tena Campbell


Based upon the motion of counsel and good cause appearing therefore, it is

ORDERED THAT the Motion to Withdraw as Counsel for T. Shelton Powers (dkt. #56-1) is  
GRANTED. Durham Jones & Pinegar and J. Mark Gibb are no longer counsel for T. Shelton Powers.



DATED this 29th day of August, 2006.

BY THE COURT:

  
TENA CAMPBELL  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of May, 2006, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which sent notification of such filing to the following:

**Brent E. Johnson**  
HOLLAND & HART (UT)  
60 E SOUTH TEMPLE STE 2000  
SALT LAKE CITY, UT 84111-1031  
(801)595-7800  
Email: [bjohnson@hollandhart.com](mailto:bjohnson@hollandhart.com)

(801)943-1688  
Email: [rgc@nf100.com](mailto:rgc@nf100.com)

**Katherine Norman**  
HOLLAND & HART (UT)  
60 E SOUTH TEMPLE STE 2000  
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(801)595-7800  
Email: [knorman@hollandhart.com](mailto:knorman@hollandhart.com)

**Robert G. Wing**  
HOLLAND & HART (UT)  
60 E SOUTH TEMPLE STE 2000  
SALT LAKE CITY, UT 84111-1031  
(801)595-7800  
Email: [rgwing@hollandhart.com](mailto:rgwing@hollandhart.com)

**Richard G. Cook**  
COOK & CO PLLC  
2425 CATALINA DR  
SALT LAKE CITY, UT 84121

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

MARK F. EDWARDS,  
Plaintiff,

vs.

TIFFANY BLAIR,  
Defendant.


ORDER GRANTING PLAINTIFF'S  
MOTION TO DISMISS AND  
DISMISSING CASE

Case No. 2:05-CV-452 TS

For the reasons stated in the Court's July 12, 2006, Order on Plaintiff's Motion to Dismiss, and Plaintiff not having filed a withdrawal of his Motion to Dismiss, it is therefore ORDERED that Plaintiff's Motion to Dismiss (Docket No. 48) is GRANTED and this case is DISMISSED WITH PREJUDICE.

DATED August 30, 2006.

BY THE COURT:

  
\_\_\_\_\_  
TED STEWART  
United States District Judge



**HOWREY LLP**

Gary F. Bendinger (0281)  
Scott D. McCoy (9749)  
170 South Main Street, Suite 400  
Salt Lake City, UT 84101  
Telephone: (801) 533-8383  
Facsimile: (801) 531-1486  
Attorneys for Plaintiff

**RECEIVED**

FILED  
DISTRICT COURT

AUG 28 2006

2006 AUG 28 P 3:27

OFFICE OF  
JUDGE TENA CAMPBELL

DISTRICT OF UTAH

DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION**

KLEIN-BECKER usa, LLC, a Utah Limited  
Liability Company,

Plaintiff,

vs.

ALL WEB LLC, a New Jersey Limited  
Liability Company dba ALL WEB  
NUTRITION, INC., LIPOSLIM SYSTEMS,  
STERLING-GRANT LABORATORIES, ROB  
DENTE, an individual, and John Does 1  
through 10,

Defendants.

~~PROPOSED~~ ORDER FOR PRO  
HAC VICE ADMISSION

Case No. 2:05cv00518 TC

Judge Tena Campbell

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of  
DUCiv R 83-1.1(d), the motion for the admission pro hac vice of Christopher B. Sullivan in the  
United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 28 day of Aug, 2006.

*Tena Campbell*  
U.S. District Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

KLEIN-BECKER usa, LLC,  
Plaintiff,

vs.

ALL WEB LLC, et al.,  
Defendants.

ORDER

Case No. 2:05-CV-518 TC

On May 25, 2006, the court issued a Consent Judgment and Order (“Order”) in the above captioned case. (See Dkt # 11.) Consequently, the case was closed. But in Paragraph 14 of the Order, the court retained jurisdiction to enforce the terms of the Order. On August 28, 2006, the Plaintiff filed a Motion for Order to Show Cause Why Defendants Should Not Be Held In Civil Contempt and Sanctioned for Violation of Consent Judgment and Order. (See Dkt. # 21.) Based on the recent Motion as well as language in the Order retaining jurisdiction, it is hereby ORDERED that the Clerk of the Court re-open the case.

DATED this 31st day of August, 2006.

BY THE COURT:



TENA CAMPBELL  
United States District Judge

2006 AUG 31 P 2: 52

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

DISTRICT OF UTAH  
BY: DEPUTY CLERK

KLEIN-BECKER usa, LLC, a Utah Limited  
Liability Company,

Plaintiff,

vs.

ALL WEB LLC, a New Jersey Limited  
Liability company, dba ALL WEB  
NUTRITION, INC., et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:05 CV 518 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this court, the above entitled case is referred to United States Magistrate Judge Brooke C. Wells. Judge Wells is directed to hear and determine any nondispositive matters pending before the court.

DATED this 31st day of August, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:35

DISTRICT OF UTAH

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

BY: DEPUTY CLERK

BASE TELECOM INC.,

*Plaintiff / Counterclaim Defendant,*

v.

NACT TELECOMMUNICATIONS,  
INC., *et al.*,

*Defendant / Counterclaim Plaintiff.*

**ORDER GRANTING PLAINTIFF'S  
UNOPPOSED MOTION FOR AN  
EXTENSION OF TIME WITHIN WHICH  
TO RESPOND TO DEFENDANTS'  
MOTION TO COMPEL**

Case No. 2:05-CV-00659 DB

Judge Dee Benson

This matter comes before the Court on the unopposed motion filed by Plaintiff Base Telecom Inc. for an extension of time, up to and including September 29, 2006, within which to respond to the motion to compel filed by Defendants on August 26, 2006. Upon consideration of the foregoing motion and the circumstances of this case, and for good cause shown, the Court hereby grants the Plaintiff's motion. WHEREFORE, it is hereby ORDERED that Plaintiff may file its memorandum in opposition to Defendants' motion to compel up to and including September 29, 2006.

IT IS SO ORDERED this 31<sup>st</sup> day of August 2006.

  
DEE BENSON  
UNITED STATES DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I hereby certify that, this 29<sup>th</sup> day of August 2006, I filed a copy of the foregoing proposed Order, electronically with the Court using the CM/ECF system, which sent notice of this filing to the following counsel (who are designated as an E-Filers):

Phillip S. Ferguson, Esquire  
Heidi G. Goebel, Esquire  
Christensen & Jensen, P.C.  
50 South Main Street, Suite 1500  
Salt Lake City, UT 84144

/s/ Gregory W. Stevens  
Gregory W. Stevens



---

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**  
**CENTRAL DIVISION**

---

**ERIC PLAYER,**

**Plaintiffs,**

**vs.**

**NORTHROP GRUMMAN  
CORPORATION,**

**Defendant.**

**MEMORANDUM DECISION AND  
ORDER**

Case No. 2:05CV753DAK

---

This matter is before the court on Defendant Northrop Grumman Corporation's Motion for Summary Judgment and Plaintiff Eric Player's Cross Motion for Summary Judgment. The court held a hearing on these motions on August 30, 2006. At the hearing, Plaintiff was represented by Kenneth Parkinson, and Defendant was represented by Mark Gavre. The court took the motions under advisement. The court has carefully considered all pleadings and memoranda submitted by the parties, and the law and facts relevant to the parties' motions. Now being fully advised, the court enters the following Memorandum Decision and Order.

**BACKGROUND**

Player brought this case under ERISA for statutory penalties alleging that his employer, Northrop Grumman, failed to send him full copies of the applicable long-term disability policy he requested. Defendant moved for summary judgment and, in response, Plaintiff opposed the motion and filed his own motion for summary judgment.

Player was employed by Northrop Grumman from January 2002 to early April 2003. During his employment, Northrop Grumman provided disability coverage to its employees through short-term and long-term disability insurance policies from CIGNA. In April 2003, Player had a seizure and resigned his employment. On or about April 24, 2003, Player applied for disability benefits by completing a CIGNA group insurance application form. CIGNA paid Player the full amount of his short-term disability benefits (six months), but denied his claim for long-term disability benefits.

Approximately two years later, on May 16, 2005, Player's counsel, Kenneth Parkinson, wrote to the "Leave Desk" at Northrop Grumman Information Technology in Herndon, Virginia. The letter states as follows:

I represent Eric Player in a disability claim. Eric was a past employee of Northrop Grumman who qualified for short-term disability benefits under the Northrop Grumman plan administered by CIGNA. CIGNA has yet to respond to his claim for long term disability benefits. He has requested a copy of his short term and long term disability benefit policy. I have reviewed it, and I am uncertain if it is completed [sic]. Will you please provide me with a complete copy of the policy in effect at the time Mr. Player became disabled. Mr. Player became disabled on March 28, 2003, when he suffered a significant seizure attack while working for Northrop Grumman in Alaska.

I would appreciate your prompt attention to this matter. Also, let me know if I should direct this inquiry to someone else. As you undoubtedly know, there are statutory penalties for failing to comply with a request to produce a policy. Let me hear from you.

Northrop Grumman received the letter on May 24, 2005. On May 31, 2005, Diana Robertson, Director of Human Resources at Northrop Grumman Information Technology, responded to Parkinson's letter stating that the benefits department was able to provide a copy of the document that was included with the letter. The document sent to Parkinson was a summary of CIGNA's "Disability Insurance" that covered Player during the time of his employment.

Player acknowledges that this summary was more complete than the copies he had received from CIGNA, but complains that it was a summary rather than a full copy of the policy. Robertson's letter also stated, "Please contact me if you need further assistance." Neither Parkinson nor Player, however, contacted Robertson or anyone at Northrop Grumman again.

On August 8, 2005, Player filed an ERISA lawsuit against CIGNA seeking long-term disability benefits. Three weeks later, on August 29, 2005, Player filed this lawsuit against Northrop Grumman for statutory penalties of \$100 per day for its failure to provide him with complete copies of the disability policies Parkinson requested in the May 16, 2005 letter.

### **DISCUSSION**

Northrop Grumman filed a motion for summary judgment asserting that Player is not entitled to statutory penalties for several reasons and, even if he is, the court, in its discretion should not award damages because Player did not act reasonably and has suffered no prejudice. Player responded with his own motion for summary judgment, claiming that Northrop Grumman failed to comply with ERISA's disclosure statute and he is entitled to statutory penalties as a matter of law. Parkinson's request was for a complete copy of the policies and Northrop Grumman responded by providing only a summary of the policy. The material facts are undisputed, therefore, summary judgment is appropriate.

Northrop Grumman first argues that it is not the Plan Administrator and, therefore, Player's penalty claim fails as a matter of law. Player alleges that Northrop Grumman violated 29 U.S.C. Section 1024(b)(4). Section 1024(b)(4) requires a participant to request a plan document from the Plan Administrator and only the Plan Administrator can be subject to the statutory penalty for failing to provide the requested documents. *Thorpe v. Retirement Plan of*

*Pillsbury Co.*, 80 F.3d 439, 444 (10<sup>th</sup> Cir. 1995).

The Plan Administrator is that person or entity designated as such under the Plan. 29 U.S.C. § 1002(16)(A)(i). The Plan Administrator of the short-term and long-term disability plans was the Employer Welfare Benefits Committee. Northrop Grumman was not the Plan Administrator. Player did not submit his document request to the Plan Administrator, but to the Leave Desk at Northrop Grumman Information Technology. More importantly, Player has not named the Plan Administrator as a defendant in the instant action.

Player contends that Northrop Grumman is the Plan Administrator within the meaning of ERISA under three different theories. First, the plan administrator designated in the Summary Plan Description, the Employer Welfare Benefits Committee, is part of the Northrop Grumman corporate structure and is not a separate entity. The committee is located at Northrop Grumman's corporate offices in Los Angeles, California.

However, making the corporation liable for ERISA penalties in this situation is contrary to controlling Tenth Circuit law. In *McKinsey v. Sentry Ins.*, 986 F.2d 401 (10th Cir. 1993), the Tenth Circuit held that only a plan administrator may be liable for the ERISA penalty. The *McKinsey* court stated that no other entity, not even the employer, can be liable for the penalty unless it is the designated plan administrator.

In *McKinsey*, the plaintiff sued his former employer alleging that the employer was liable for statutory penalties for failing to provide certain plan information. The plaintiff argued that the designated plan administrator was one in name only and that the employer was the de facto administrator. *Id.* at 404. The *McKinsey* court expressly rejected such an expansive definition of a plan administrator. *Id.* at 405. The court stated that it disagreed "with the First Circuit's

assertion that permitting a plaintiff to bring a § 1132(c) claim against his or her employer as the de facto plan administrator is necessary to further congressional intent.” *Id.* at 404. The court concluded that “because [the employer] was not the plan administrator designated by the SERP [plan documents], plaintiff could not assert a § 1132(c) claim against [the employer].” *Id.* at 405.

This *McKinsey* court’s analysis disposes of Player’s claim in its entirety. It is undisputed that Northrop Grumman is not the plan administrator. It is, moreover, undeniable that the Tenth Circuit has considered and rejected the theory that an employer who is not the designated plan administrator can nonetheless be liable for statutory penalties.

Second, Player asserts that Northrop Grumman is a plan fiduciary within the meaning of 29 U.S.C. § 1002(21)(a) and is, therefore, subject to the ERISA disclosure requirements. Player’s reliance on *Hernandez v. Prudential Ins. Co.*, 2001 WL 1152835 (D. Utah March 28, 2001), to assert that Northrop Grumman is a plan fiduciary, however, is misplaced. In *Hernandez*, the plaintiff sued Prudential, the insurer of a group medical benefit plan, seeking documents that Prudential had relied on in denying his claim for benefits. While the employer in that case was the plan administrator, Prudential retained control and discretion to deny or grant claims for benefits and appeals under the plan. On that basis, the court determined that Prudential was a fiduciary and was required to produce the documents on which it had relied in denying the plaintiff’s claim for benefits. *Id.* at \*2, 8.

In this case, the Employer Welfare Benefits Committee is the designated plan administrator and CIGNA is the designated plan fiduciary. Therefore, while *Hernandez* would support a claim against CIGNA in this case for producing documents on which it relied to deny

Player's long-term disability benefits, it provides no support for Player's contention that Northrop Grumman is a fiduciary or liable for the ERISA penalty.

The fact that the Human Resources Director of a Northrop Grumman subsidiary (Northrop Grumman Information Technology) responded to plaintiff's counsel's request for information does not make Northrop Grumman Corporation a fiduciary. The Tenth Circuit has explained that "even where 'company personnel other than the plan administrator routinely assume responsibility for answering requests from plan participants and beneficiaries . . . the statutory liability for failing to provide requested information remains with the designated plan administrator . . . , not with the employer or its other employees.'" *Averhart*, 46 F.3d at 1489-90 (quoting *McKinsey*, 986 F.2d at 404-05).

In *Averhart*, the plan designated the "Employees Benefit Committee" as the plan administrator. The plaintiffs claimed that the committee's secretary was liable for the ERISA penalty because he "acted as administrator, was the contact person for the [committee], and was responsible for (and took responsibility for) the tardy production of the requested documents.'" *Id.* at 1489. The Tenth Circuit rejected the plaintiffs' argument, explaining that the plan's designation of the Employee's Benefit Committee was "conclusive" for purposes of the ERISA penalty even if the Committee's secretary functioned as the plan administrator as a practical matter. *Id.*

Although Player asserts that the Employer Welfare Benefits Committee is merely part of the corporate structure, nothing in ERISA requires the Plan Administrator to be a separate corporate entity. The plan administrator in *Averhart* was a committee similar to the committee in this case. And, in *McKinsey*, the plan administrator was the employer's vice president of

human resources. In both cases, the Tenth Circuit held that only the formally designated plan administrator could be liable for the ERISA penalty.

Finally, Player asserts that before he obtained the complete policies in November of 2005, he had no notice that a plan administrator had been designated, and the default ERISA rules state that the plan sponsor is the plan administrator in the absence of a specific designation. *See* 29 U.S.C. § 1002(16)(A)(i). In this case, the plan sponsor is Northrop Grumman. Player claims that it would be unfair to require him to sue an unknown entity for failure to provide documents when that entity was only identified in the requested documents that were not provided.

The default rules under ERISA, however, clearly states that when “the instrument under which the plan is operated” does not designate a plan administrator, the plan sponsor is the plan administrator. 29 U.S.C. § 1002(16)(A)(i), (ii). In this case, the Summary Plan Description expressly designates the Employer Welfare Benefits Committee as the plan administrator. Accordingly, the default rules under ERISA do not apply. The court concludes that there is no basis under controlling Tenth Circuit law for finding Northrop Grumman liable for the statutory penalty.

Even if this court were to find a basis for applying the statutory penalty in this case, it has discretion in determining the proper amount. When deciding whether to impose a penalty, the presence or absence of prejudice or bad faith “can certainly be taken into account by a district court in deciding whether to exercise its discretion and impose a penalty.” *Deboard v. Sunshine Min. and Refining Co.*, 208 F.3d 1228, 1244 (10<sup>th</sup> Cir. 2000) (holding district court did not abuse its discretion in choosing not to impose penalties on employer for violation of ERISA’s

document disclosure requirements).

In this case, the facts demonstrate that Player did not act reasonably with respect to the document request and he suffered no prejudice as a result of Northrop Grumman's response. Northrop Grumman's response was sent within a week of its receipt of the request. The letter also invited Parkinson to contact Robertson if he needed further assistance. Although Parkinson found the summary document inadequate, he never wrote or telephoned Robertson. The lack of contact after the summary was sent gave Northrop Grumman no indication that Player or Parkinson found the response inadequate. Because Northrop Grumman responded so quickly, there was sufficient time to rectify the inadequacies before the statutory time period expired if counsel had notified Northrop Grumman that the summary was inadequate.

Moreover, Player was not prejudiced by Northrop Grumman's response. Parkinson's letter indicated that he had already received copies of the policies from CIGNA in the dispute over long-term disability benefits. Player contends that he was disadvantaged in his ability to file a complaint against CIGNA for benefits because he did not have a full copy of the policy. But Player filed his complaint against CIGNA in August 2005—only two months after Parkinson's letter to Northrop Grumman. CIGNA did not move to dismiss the case because of general allegations, it merely answered the Complaint. Player claims that the delay in fully litigating his claim with CIGNA amounted to months of otherwise unnecessary attorneys' fees. But Player himself delayed two years in requesting the documents from Northrop Grumman. That delay cannot be attributed to Northrop Grumman. And, Player received a full copy of the policy as a result of this case by November 2005. The court can take judicial notice of the docket in the CIGNA case and there is no specific evidence of delay in that litigation that could be attributed




to Northrop Grumman's failure to provide the requested documents. Therefore, the court concludes that Player is not entitled to the ERISA penalty. Accordingly, the court grants Northrop Grumman's motion for summary judgment and denies Player's motion for summary judgment.

### **CONCLUSION**

Based on the above reasoning, Defendant's Motion for Summary Judgment is GRANTED and Plaintiffs' Motion for Summary Judgment is DENIED. This case is dismissed with prejudice, each party to bear his or its own costs. The Clerk of Court is directed to enter judgment in favor of Defendant and against Plaintiff.

DATED this 31<sup>st</sup> day of August, 2006.

BY THE COURT

  
\_\_\_\_\_  
DALE A. KIMBALL  
United States District Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 1:38

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

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Lisa B. Bohman (10733)  
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Attorneys for Defendants  
Scott Kimball and Gary R. Free

**UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH**

AURORA LOAN SERVICES LLC F/K/A  
AURORA LOAN SERVICES, INC.,

Plaintiff,

v.

SCOTT KIMBALL, GARY R. FREE,  
JERAD B. PARK, BLAINE L. PARK,  
FIRST WESTERN MORTGAGE  
CORPORATION,

Defendants.

**AMENDED SCHEDULING ORDER**

Civil No. 2:05cv00871 DB

Pursuant to the Joint Motion to Amend Scheduling Order submitted by the parties, Fed. R. Civ. P. 16(b), and good cause appearing therefore,

IT IS HEREBY ORDERED that the initial Scheduling Order entered by the Court in this matter on February 16, 2006, be amended as follows:

- 1) Fact discovery: from August 31, 2006 to **October 31, 2006;**
- 2) Expert discovery: from January 31, 2007 to **February 16, 2007;**

- 3) Plaintiff's Expert Reports: from September 29, 2006 to **November 17, 2006**.
- 4) Defendant's Expert Reports from November 10, 2007 to **December 22, 2006**.
- 5) Counter Reports: from November 27, 2006 to **January 12, 2007**.
- 6) Deadline for filing dispositive or potentially dispositive motions: from February 15, 2007 to **March 16, 2007**;
- 7) Evaluate case for Settlement/ADR: from August 31, 2006 to **October 31, 2006**;

All other dates and provisions contained in the initial Scheduling Order remain unchanged.

DATED this 30<sup>th</sup> day of August, 2006.

BY THE COURT



Honorable Dee Benson  
United States District Judge

AGREED AS TO FORM:

VAN COTT, BAGLEY, CORNWALL & McCARTHY

/s/ Thomas R. Barton  
Thomas R. Barton  
Lisa B. Bohman

*Attorneys for Defendants Gary R. Free, Scott Kimball,  
Jerad B. Park, and Blaine L. Park*

/s/ Joseph E. Wrona  
Joseph E. Wrona  
Bastianan K. Coebergh

*Attorneys for Defendant First Western Mortgage Corporation*

/s/ Peter J. Salmon  
Peter J. Salmon  
James H. Woodall

*Attorneys for Aurora Loan Services LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 29th day of August, 2006, I electronically filed the foregoing **AMENDED SCHEDULING ORDER** with the Clerk of Court using the CM/ECF system, which sent notification of such filing to the following CM/ECF participants:

Peter J. Salmon  
PITE DUNCAN & MELMET, LLP  
525 E. Main Street  
P.O. Box 12289  
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James H. Woodall  
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Joseph E. Wrona  
Bastianan K. Coebergh  
1816 Prospector Avenue, #100  
Park City, UT 84060

\_\_\_\_\_/s/ Thomas R. Barton\_\_\_\_\_

FILED  
U.S. DISTRICT COURT

2005 AUG 31 A 10:35

DISTRICT OF UTAH

BY: DEPUTY CLERK

Bentley J. Tolk (6665)  
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Salt Lake City, Utah 84111  
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Facsimile: (801) 532-7750

Attorneys for Defendant Life Insurance  
Company of North America

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

---

DIXIE A. PETERSEN,

Plaintiff,

vs.

BARD ACCESS SYSTEMS INC., BARD  
ACCESS SYSTEMS INC. LONG TERM  
DISABILITY PLAN, and LIFE  
INSURANCE COMPANY OF NORTH  
AMERICA,

Defendants.

**ORDER OF DISMISSAL  
WITH PREJUDICE**

Case No. 2:05cv00942 DB

Judge Dee Benson


---

Based upon the Stipulated Motion for Dismissal with Prejudice, and good cause  
appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that this action and plaintiff's Complaint (and each and every cause of action contained therein) in this action are dismissed with prejudice, each party to bear its/her own attorneys' fees and costs.

DATED this 30<sup>th</sup> day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
The Honorable Dee Benson  
U.S. District Court Judge

APPROVED AS TO FORM AND CONTENT:

BRIAN S. KING, ATTORNEY AT LAW

By: /s/ Brian S. King  
Brian S. King  
Nicole T. Durrant  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25<sup>th</sup> day of August, 2006, a true and correct copy of the foregoing **ORDER OF DISMISSAL WITH PREJUDICE** was served via electronic service on the following:

Brian S. King  
Nicole T. Durrant  
Attorney at Law  
336 South 300 East, Suite 200  
Salt Lake City, Utah 84111

/s/ Bentley J. Tolks



IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

MICHAEL L. PAOLONE,	)	
	)	
Petitioner,	)	Case No. 2:05-CV-1050 TC
	)	
v.	)	District Judge Tena Campbell
	)	
CLINT FRIEL,	)	<b>O R D E R</b>
	)	
Respondent.	)	Magistrate Judge Brooke Wells

---

Petitioner, Michael L. Paolone, moves for appointed counsel to help him in his quest for habeas corpus relief. See 28 U.S.C.S § 2254 (2006).

Petitioner has no constitutional right to appointed counsel in a federal habeas corpus case. See *United States v. Lewis*, No. 97-3135-SAC, 91-10047-01-SAC, 1998 U.S. Dist. LEXIS 21998, at \*8 (D. Kan. December 9, 1998). Moreover, because no evidentiary hearing is required here, Petitioner has no statutory right to counsel. See Rule 8(c), R. Governing § 2254 Cases in U.S. Dist. Courts. However, the Court may in its discretion appoint counsel when "the interests of justice so require" for a "financially eligible person" bringing a § 2254 petition. See 18 U.S.C.S § 3006A(a)(2)(B) (2006).

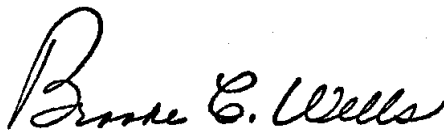
The Court has reviewed the filings in this case and determines that justice does not require appointed counsel at this time. First, it is yet unclear that Petitioner has asserted any colorable claims. See *Lewis*, 1998 U.S. Dist. LEXIS 21998, at \*10; *Oliver v. United States*, 961 F.2d 1339, 1343 (7th Cir.

1992). Second, Petitioner has shown "the ability to investigate the facts necessary for his issues and to articulate them in a meaningful fashion." *Lewis*, 1998 U.S. Dist. LEXIS 21998, at \*10; *Oliver*, 961 F.2d at 1343. Finally, the issues in this case appear "straightforward and not so complex as to require counsel's assistance." *Lewis*, 1998 U.S. Dist. LEXIS 21998, at \*10; *Oliver*, 961 F.2d at 1343. The Court thus denies for now Plaintiff's motion for appointed counsel.

IT IS HEREBY ORDERED that Petitioner's motion for appointed counsel is denied. (See File Entry # 5.) However, if it later appears that counsel may be needed or of specific help, the Court will appoint an attorney to appear on Petitioner's behalf.

DATED this 31st day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter 'B' is large and loops around the first few letters. The signature is positioned above a horizontal line.

BROOKE C. WELLS  
United States Magistrate Judge

# UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

UNITED STATES OF AMERICA

V.

JOSE JUAN ROJAS-JUAREZ

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 206CR000053-001

USM Number: 13250-081

Mark Gregersen

Defendant's Attorney

## THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Superceding Misdemeanor Information

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1325(a)	Illegal Entry into the United States, Eluding Inspection		1s

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☒ Count(s) the Indictment ☒ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/28/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

United States District

Title of Judge

8/29/2006

Date

DEFENDANT: JOSE JUAN ROJAS-JUAREZ  
CASE NUMBER: 206CR000053-001

## IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

Time-served.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

## RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JOSE JUAN ROJAS-JUAREZ  
CASE NUMBER: 206CR000053-001

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of :

12 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☐ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: JOSE JUAN ROJAS-JUAREZ  
CASE NUMBER: 206CR000053-001

### ADDITIONAL SUPERVISED RELEASE TERMS

The defendant shall not re-enter the United States illegally. In the event that the defendant should be released from confinement without being deported, he shall contact the United States Probation Office in the district of release within 72 hours of release. If the defendant returns to the United States during the period of supervision after being deported, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

DEFENDANT: JOSE JUAN ROJAS-JUAREZ

CASE NUMBER: 206CR000053-001

### CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 10.00	\$	\$

☐ The determination of restitution is deferred until \_\_\_\_\_. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss*</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
----------------------	--------------------	----------------------------	-------------------------------

TOTALS	\$ 0.00	\$ 0.00	
--------	---------	---------	--

☐ Restitution amount ordered pursuant to plea agreement \$ \_\_\_\_\_

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JOSE JUAN ROJAS-JUAREZ

CASE NUMBER: 206CR000053-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 10.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or
- ☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- ☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.



FILED

AUG 24 2006

United States District Court  
District of Utah

ROBERT T. BRAITHWAITE  
U.S. MAGISTRATE

UNITED STATES OF AMERICA

JUDGMENT IN A CRIMINAL CASE

vs.

Brent A. Spendlove

Case Number: 2:06-cr-00082-001

Plaintiff Attorney: Paul Graf

Defendant Attorney: Pro Se

Date of Imposition: August 24, 2006

THE DEFENDANT:

☐

☒ pleaded guilty to count(s)

☐

pleaded nolo contendere to count(s)  
which was accepted by the court.

☐

was found guilty on count(s)

COP  
Date

Verdict

Count I

Title & Section

21 USC 844

Nature of Offense

Possession of a controlled substance

Count  
Number(s)

I

☐

The defendant has been found not guilty on count(s) count

☐

Count(s) (is)(are) dismissed on the motion of the United States.

SENTENCE

On February 9, 2006, the court entered an order of Probation under 18 U.S.C. 3607, and the defendant signed a consent should he "violate any conditions of probation, the court may enter a judgment of conviction."

On August 24, 2006, the defendant admitted violating the terms of probation. Therefore, an order of conviction is entered in this case.

The defendant is placed on Probation for a term of 12 months supervised.

The defendant shall not commit another federal, state or local crime.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

Defendant: Brent A. Spendlove  
Case Number: 2:06-cr-00082-001

- ☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release/probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions in this judgment.

### **STANDARD CONDITIONS OF SUPERVISED RELEASE/PROBATION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE / PROBATION**

Defendant: Brent A. Spendlove  
Case Number: 2:06-cr-00082-001

In addition to all Standard Conditions of Supervised Release or Probation set forth above, the following Special Conditions are imposed:

1. The Defendant shall not use or possess drugs..
2. The Defendant shall submit to drug/alcohol testing, as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If deemed appropriate by the Court and the probation office, the defendant will pay additional costs associated with confirmation and testing of positive results reported to the Court.
3. The Defendant shall submit to the search of his/her person, residence, office or vehicle under his/her control, by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.

### CRIMINAL MONETARY PENALTIES

#### FINE

The defendant shall pay a fine in the amount of \$ 1000.00 , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
as directed by probation department

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- 

#### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--

Defendant: Brent A. Spendlove  
Case Number: 2:06-cr-00082-001

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

☐ forthwith.

☒ as directed by probation department

#### PRESENTENCE REPORT / OBJECTIONS

☐ The court adopts the factual findings and guideline application in the presentence report.

☐ The court adopts the factual findings and guideline application in the presentence report, except as set forth below:

#### Guideline Range Determined by the Court:

Total Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months

Supervised Release Range: \_\_\_\_\_ to \_\_\_\_\_ years

Fine Range: \_\_\_\_\_ to \_\_\_\_\_

#### RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Brent A. Spendlove  
Case Number: 2:06-cr-00082-001

**CUSTODY/SURRENDER**

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the Washington County Correctional Facility at Purgatory at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the \_\_\_\_\_ institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

8-24-06



**Robert T. Braithwaite**  
**United States Magistrate Judge**

**FILED**

**AUG 24 2006**

**United States District Court**  
**District of Utah**

**ROBERT T. BRAITHWAITE**  
**U.S. MAGISTRATE**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**

**vs.**

**Aaron D. Peeples**

Case Number: **2:06-cr-00084-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **Pro Se**

**Date of Imposition: August 24, 2006**

THE DEFENDANT:

☐

☒ pleaded guilty to count(s)

☐

☐ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐

☐ was found guilty on count(s)

COP  
Date

Verdict

Count I

**Title & Section**

21 USC 844

**Nature of Offense**

Possession of a controlled substance

**Count**  
**Number(s)**

I

☐

The defendant has been found not guilty on count(s) count

☐

Count(s) (is)(are) dismissed on the motion of the United States.

**SENTENCE**

On February 9, 2006, the court entered an order of Probation under 18 U.S.C. 3607, and the defendant signed a consent should he "violate any conditions of probation, the court may enter a judgment of conviction."

On August 24, 2006, the defendant admitted violating the terms of probation. Therefore, an order of conviction is entered in this case.

The defendant is placed on Probation for a term of 12 months supervised.

The defendant shall not commit another federal, state or local crime.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

Defendant: Aaron D. Peebles  
Case Number: 2:06-cr-00084-001

☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release/probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions in this judgment.

### **STANDARD CONDITIONS OF SUPERVISED RELEASE/PROBATION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

### **SPECIAL CONDITIONS OF SUPERVISED RELEASE / PROBATION**

Defendant: Aaron D. Peeples  
Case Number: 2:06-cr-00084-001

In addition to all Standard Conditions of Supervised Release or Probation set forth above, the following Special Conditions are imposed:

1. The Defendant shall not use or possess drugs..
2. The Defendant shall submit to drug/alcohol testing, as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If deemed appropriate by the Court and the probation office, the defendant will pay additional costs associated with confirmation and testing of positive results reported to the Court.
3. The Defendant shall submit to the search of his/her person, residence, office or vehicle under his/her control, by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.

### CRIMINAL MONETARY PENALTIES

#### FINE

The defendant shall pay a fine in the amount of \$ 1000.00 , payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
as directed by probation department

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:  
\_\_\_\_\_

#### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--



Defendant: Aaron D. Peebles  
Case Number: 2:06-cr-00084-001

Totals: \$ \_\_\_\_\_ \$ \_\_\_\_\_

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.

☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

☐ forthwith.

☒ as directed by probation department

### PRESENTENCE REPORT / OBJECTIONS

☐ The court adopts the factual findings and guideline application in the presentence report.

☐ The court adopts the factual findings and guideline application in the presentence report, except as set forth below:

#### Guideline Range Determined by the Court:

Total Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months

Supervised Release Range: \_\_\_\_\_ to \_\_\_\_\_ years

Fine Range: \_\_\_\_\_ to \_\_\_\_\_

### RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons:

Defendant: Aaron D. Peebles  
Case Number: 2:06-cr-00084-001

**CUSTODY/SURRENDER**

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the Washington County Correctional Facility at Purgatory at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the \_\_\_\_\_ institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

DATE:

8-24-06



**Robert T. Braithwaite**  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT  
2006 AUG 31 A 9:51  
DISTRICT OF UTAH, CENTRAL DIVISION  
DISTRICT OF UTAH

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD MAXWELL,

Defendant.

BY: DEPUTY CLERK  
**ORDER TO CONTINUE  
JURY TRIAL**


Case No. 2:06-CR-107TS

Based on the motion to continue trial filed by Defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial scheduled for September 5, 2006, is hereby continued to the 11th day of October, 2006, at 8:30 a.m. Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the defendant in a speedy trial. Accordingly, the time between the date of this order and the new trial date set forth in paragraph one above is excluded from speedy trial computation.

DATED this 30th day of August, 2006.

BY THE COURT:

  
TED STEWART  
United States District Court Judge

BRETT TOLMAN, United States Attorney (#8821)  
KARIN M. FOJTIK, Assistant United States Attorney (#7527)  
Attorneys for the United States of America  
185 South State Street, Suite 400  
Salt Lake City, Utah 84111-1506  
Telephone: (801) 524-5682  
Facsimile: (801) 524-4475  
Karin.Fojtik@usdoj.gov

FILED **RECEIVED**  
U.S. DISTRICT COURT  
2006 AUG 29 P 3:46 29 2006  
DISTRICT OF UTAH OFFICE OF  
JUDGE TENA CAMPBELL  
BY: \_\_\_\_\_  
DEPUTY CLERK

JILL R. TRUMBULL-HARRIS, Trial Attorney  
Criminal Division, United States Department of Justice  
1400 New York Ave., NW, Suite 600  
Washington, D.C. 20530  
Telephone: (202) 514-6715  
Facsimile: (202) 514-1793  
jill.trumbull-harris@usdoj.gov

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,	:	Case No. _2:06 cr 124
	:	
Plaintiff,	:	
	:	
	:	<b>ORDER TO FILE EXHIBITS</b>
	:	<b>UNDER SEAL</b>
vs.	:	
	:	
MATTHEW JOHN DUHAMEL	:	
CHARLES PHILLIP GRANERE,	:	Hon. Tena Campbell
	:	
Defendants,	:	
	:	

---

For the reasons articulated in the Motion to File Exhibits Under Seal, the Court

GRANTS the United States motion.

SO ORDERED.

Dated this 29 day of Aug, 2006.

A handwritten signature in cursive script, reading "Tena Campbell", written over a horizontal line.

Hon. Tena Campbell  
United States District Court

UNITED STATES DISTRICT COURT

CENTRAL DIVISION

District of

UTAH

UNITED STATES OF AMERICA

V.

JUAN DE DIOS DE LA CRUZ

JUDGMENT IN A CRIMINAL CASE

Case Number: DUTX 206CR000163-001

USM Number: 13800-081

Robert Hunt

Defendant's Attorney

THE DEFENDANT:

☒ pleaded guilty to count(s) 1 of the Indictment

☐ pleaded nolo contendere to count(s) \_\_\_\_\_  
which was accepted by the court.

☐ was found guilty on count(s) \_\_\_\_\_  
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
8 U.S.C. § 1326	Reentry of a Previously Removed Alien		1

The defendant is sentenced as provided in pages 2 through 10 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) \_\_\_\_\_

☐ Count(s) \_\_\_\_\_ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

8/30/2006

Date of Imposition of Judgment

Signature of Judge

Ted Stewart

Name of Judge

United States District

Title of Judge

8/31/2006

Date

DEFENDANT: JUAN DE DIOS DE LA CRUZ  
CASE NUMBER: DUTX 206CR000163-00\

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

33 months

☒ The court makes the following recommendations to the Bureau of Prisons:

Incarceration in a facility close to Ciudad Juarez

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on \_\_\_\_\_

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_

at \_\_\_\_\_, with a certified copy of this judgment.

\_\_\_\_\_  
UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

DEFENDANT: JUAN DE DIOS DE LA CRUZ  
CASE NUMBER: DUTX 206CR000163 -CO\

### SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of:

24 months

The defendant must report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.

- ☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ☒ The defendant shall not possess a firearm, ammunition, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☒ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of supervised release that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.



DEFENDANT: JUAN DE DIOS DE LA CRUZ  
CASE NUMBER: DUTX 206CR000163-00\

### **ADDITIONAL SUPERVISED RELEASE TERMS**

The defendant shall not illegally reenter the United States. If the defendant returns to the United States during the period of supervision, he is instructed to contact the United States Probation Office in the District of Utah within 72 hours of arrival in the United States.

## CRIMINAL MONETARY PENALTIES

\* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: JUAN DE DIOS DE LA CRUZ  
CASE NUMBER: DUTX 206CR000163-001

### SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

- A ☒ Lump sum payment of \$ 100.00 due immediately, balance due
- ☐ not later than \_\_\_\_\_, or  
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal \_\_\_\_\_ (e.g., weekly, monthly, quarterly) installments of \$ \_\_\_\_\_ over a period of \_\_\_\_\_ (e.g., months or years), to commence \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within \_\_\_\_\_ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Pages 7 - 10  
are the  
Statement of Reasons,  
which will be docketed  
separately as a sealed  
document

# UNITED STATES DISTRICT COURT

**FILED**

**AUG 24 2006**

CENTRAL

DISTRICT OF

UTAH

ROBERT T. BRAITHWAITE  
U.S. MAGISTRATE

UNITED STATES OF AMERICA

v.

FREDRICK G. REIGHARD

## ORDER OF PROBATION UNDER 18 U.S.C. § 3607

CASE NUMBER: 2:06-CR-186

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

### The defendant:

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date:

8-24-06



Signature of Judicial Officer

**Robert T. Braithwaite, U.S. Magistrate**

Name and Title of Judicial Officer

## CONSENT OF THE DEFENDANT

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.



(Signature of Defendant)

6725 Mission Canyon Rd 210 A

(Street Address)

San Diego CA 92120

(City, State, Zip)

619 255 1870

(Telephone Number of Defendant)

5/19/1981

(Birthdate of Defendant)



(Signature of Defense Counsel)

8-21-06

(Date of Signing)

## CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle under his/her control by a U.S. probation officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 8/3/2006

by

[Signature]  
Signature of Defendant

DATED: 8-21-06

by

[Signature]  
Signature of Defense Counsel

STEVEN B. KILLPACK, Federal Defender (#1808)  
WENDY M. LEWIS, Assistant Federal Defender (#5993)  
Utah Federal Defender Office  
46 West 300 South, Suite 110  
Salt Lake City, Utah 84101  
Telephone: (801) 524-4010

FILED  
**RECEIVED**  
AUG 14 2006  
AUG 29 P 3:39  
DISTRICT OF UTAH  
OFFICE OF  
JUDGE TENA CAMPBELL  
DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-vs-

MABEL JANE MITCHELL,

Defendant.

:

:

:

:

:

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 2:06CR-216TC

Based on the motion to continue trial filed by defendant in the above-entitled case, and good cause appearing,

It is hereby ORDERED that the trial previously scheduled for August 14, 2006, be stricken, for the following reasons:

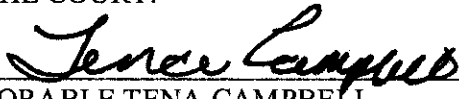
1. Counsel for the Defendant believes that this case can be resolved by plea negotiations and the Government and the Defendant are still in the process of negotiating a resolution of this case.

It is further ORDERED that the new trial date is scheduled for the 16 day of October, 2006, at 830 am. Pursuant to 18 U.S.C. § 3161(h), the court finds the ends of justice served by such a continuance outweigh the best interests of the public and the

defendant to a speedy trial. The time of the delay shall constitute excludable time under the Speedy Trial Act.

DATED this 14 day of August, 2006.

BY THE COURT:

*final*  
*Continuance*  
  
\_\_\_\_\_  
HONORABLE TENA CAMPBELL  
United States District Court Judge



United States District Court  
for the District of Utah

**Petition and Order for Summons for Offender Under Supervision**

Name of Offender: **Dominic P. Burns**

Docket Number: **2:06-CR-00288-001**

Name of Sentencing Judicial Officer: **Honorable Robert T. Braithwaite**  
**United States Magistrate Judge**

**FILED**

Date of Original Sentence: **July 6, 2006**

**AUG 24 2006**

Original Offense: **Alcohol Related Reckless Driving**

**ROBERT T. BRAITHWAITE**  
**U.S. MAGISTRATE**

Original Sentence: **12 months probation; \$1,500 fine**

Type of Supervision: **Probation**

Supervision Began: **July 6, 2006**

**PETITIONING THE COURT**

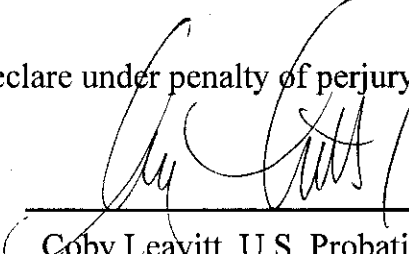
☒ **To issue a summons**

**CAUSE**

The probation officer believes that the offender has violated the conditions of supervision as follows:

**Allegation No. 1:** On or about July 10, 2006, the defendant absconded from supervision in the District of Nevada and relocated to the District of Oregon without permission of the probation office.


I declare under penalty of perjury that the foregoing is true and correct

  
Coby Leavitt, U.S. Probation Officer

Date: August 22, 2006

**THE COURT ORDERS:**

- ☒ The issuance of a summons  
☐ The issuance of a warrant  
☐ No action  
☐ Other

  
Honorable Robert T. Braithwaite  
United States Magistrate Judge

Date: 8-24-06

**EDWARD K. BRASS (432)**  
Attorney for Defendant  
175 East 400 South, Suite 400  
Salt Lake City, Utah 84111  
Telephone: (801) 322-5678  
Facsimile: (801) 322-5677

FILED  
U.S. DISTRICT COURT  
2006 AUG 30 P 3:11  
DISTRICT OF UTAH  
BY: \_\_\_\_\_  
DEPUTY CLERK

**IN THE UNITED STATES DISTRICT COURT**

**IN AND FOR CENTRAL DIVISION, DISTRICT OF UTAH**

<b>THE UNITED STATES OF AMERICA,</b> Plaintiff,  v.  <b>DAVID R. LEIFSON,</b> Defendant,	<b>ORDER TO CONTINUE JURY TRIAL</b>   Case No. 2:06cr00313  Judge Campbell
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The Court, having considered the defendant's motion and for good cause appearing, does hereby,

**ORDER:**

1. The trial scheduled in this matter for September 11, 2006, is stricken and the matter is reset for the 16<sup>th</sup> day(s) in October, 2006, at 830 a.m.

The time between this trial date and the next trial date would properly be excluded from the Speedy Trial Act pursuant to 18 U.S.C. § 3161 (h)(3)(A) and (h)(3)(B)(8).

DATED this 29 day of August, 2006.

BY THE COURT:

*final*  
*Continuance*

Tena Campbell

TENA CAMPBELL

United States District Court

**FILED**

UNITED STATES DISTRICT COURT

AUG 24 2006

CENTRAL

DISTRICT OF

ROBERT T. BRAITHWAITE  
U.S. MAGISTRATE

UNITED STATES OF AMERICA

v.

JEFFREY S. NEWMAN

**ORDER OF PROBATION  
UNDER 18 U.S.C. § 3607**

CASE NUMBER: 2:06-CR- 319

The defendant having been found guilty of an offense described in 21 U.S.C. 844, by reason of a plea of guilty and it appearing that the defendant (1) has not, prior to the commission of such offense, been convicted of violating a federal or state law relating to controlled substances, and (2) has not previously been the subject of a disposition under this subsection,

**IT IS ORDERED** that the defendant is placed on probation as provided in 18 U.S.C. § 3607 for a period of twelve (12) months without a judgment of conviction first being entered. The defendant shall comply with the conditions of probation set forth on both pages of this Order, and the following special conditions:

**The defendant:**

- 1) Shall pay a fine in the amount of \$1,000 and a \$25 special assessment fee;
- 2) Shall submit to drug/alcohol testing, as directed by the probation office, and shall pay a one-time \$115 fee to partially defer the costs of collection and testing. If testing reveals illegal drug use, the defendant shall participate in drug and/or alcohol abuse treatment under a co-payment plan as directed by the United States Probation office.

Date:

8-24-06



Signature of Judicial Officer

**Robert T. Braithwaite, U.S. Magistrate**

Name and Title of Judicial Officer

**CONSENT OF THE DEFENDANT**

I have read the proposed Order of Probation Under 18 U.S.C. § 3607 and the Conditions of Probation. I understand that if I violate any conditions of probation, the court may enter a judgment of conviction and proceed as provided by law. I consent to the entry of the Order.

I also understand that, if I have not violated any condition of my probation, the Court, without entering a judgment of conviction, (1) may dismiss the proceedings and discharge me from probation before the expiration of the term of probation, or (2) shall dismiss the proceedings and discharge me from probation at the expiration of the term of probation.



(Signature of Defendant)

411 West 1st St

(Street Address)

Wellesley, MA 02482

(City, State, Zip)

(781) 237-9894

(Telephone Number of Defendant)

05-26-1987

(Birthdate of Defendant)



(Signature of Defense Counsel)

8-18-06

(Date of Signing)

## CONDITIONS OF PROBATION

While the defendant is on probation, the defendant:

- 1) shall not commit another federal, state, tribal or local crime;
- 2) shall not leave the judicial district without the permission of the court or probation officer;
- 3) shall report to the probation officer as directed by the court and shall submit a truthful and complete written report within the first five days of each month;
- 4) shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 5) shall support his or her dependents and meet other family responsibilities;
- 6) shall work regularly at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 7) shall notify the probation officer within seventy-two hours of any change in residence or employment;
- 8) shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
- 9) shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 10) shall not associate with any persons engaged in criminal activity, and shall not associate with any person convicted of a felony unless granted permission to do so by the probation officer;
- 11) shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view by the probation officer;
- 12) shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 13) shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without permission of the court;
- 14) as directed by the probation officer, shall notify third parties of risks that may be occasioned by defendant's criminal record or personal history or characteristics, and shall permit the probation officer to make such notification and to confirm the defendant's compliance with such notification requirement;
- 15) shall not possess a firearm or destructive device.
- 16) shall submit to a search of his or her person, residence, office or vehicle by a U.S. probation officer in a reasonable time and manner based on a reasonable suspicion of contraband or evidence of a violation of a condition of probation. Defendant shall warn any other residents that the premise may be searched pursuant to this condition.

DATED: 8/4/02

by

  
Signature of Defendant

DATED: 8-18-02

by:

  
Signature of Defense Counsel  
(If any)

---

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA

Plaintiff,

vs.

TONY JAMES THARP,

Defendant.

PRE-TRIAL ORDER

Case No. 2:06 CR 359 PGC

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This case is set for trial on **November 28, 2006**. The parties shall meet in court at 7:45 a.m. the first day of trial to resolve any pre-trial issues. Trial shall be conducted from 8:00 to 1:00 p.m. daily, or as otherwise directed by the court.

To ensure that the trial proceeds smoothly, the parties are instructed as follows:

1. **Voir Dire** - The court sends a questionnaire to all potential jurors prior to trial. The copies of the answered questionnaires are available at 3:00 the day prior to trial in court chambers. The court's stock voir dire questions are available on the chamber's website. Any requests for additional voir dire questions should be submitted to the court no later than two business days before the start of trial. The court expects that the parties will be prepared to rapidly exercise their peremptory challenges on the morning of trial by carefully reviewing all the information contained in the questionnaires before trial. To facilitate rapid exercise of

peremptory challenges, the attorneys for both sides are directed to prepare their own, confidential ranking of the desirability of all members of the jury pool *before* the morning of trial.

**2. Jury Instructions** - The government is directed to provide proposed jury instructions to the defendant by **October 16, 2006**. The defense is directed to provide proposed jury instructions to the government by **October 30, 2006**. The government and the defense are directed to then meet and confer and provide a single set of proposed jury instructions to the court by **November 6, 2006**. Any unresolved objections are also to be filed on **November 6, 2006**. The court will address these objections at the final pretrial, scheduled for **November 14, 2006, at 2:30 p.m.** The court's standard jury instructions are available on the court's website – [www.utd.uscourts.gov](http://www.utd.uscourts.gov), under “Judges,” and “Cassell” and “Practices and Procedures.” The parties should use the court's stock instructions wherever possible, and only submit jury instructions outside of the court's stock. When submitting the proposed instructions and the agreed-upon jury instructions, counsel should file these with the court the court **and** e-mail them to chambers at [daphne\\_oberg@utd.uscourts.gov](mailto:daphne_oberg@utd.uscourts.gov).

**3. Verdict Form** – Any proposed verdict form should be filed with the court and emailed to chambers at the above address no later than **November 6, 2006**. Counsel is urged to file an agreed-upon verdict form and to file that with the court, but the court will entertain separate versions if counsel is unable to come to an agreement before the pre-trial conference.

**4. Exhibit Lists/Marking Exhibits** - The parties must prepare a complete exhibit list, including proposed exhibits, for the court prior to trial. A copy of this list must be provided to the court, and the courtroom deputy the morning of trial. The accepted form of exhibit list is available on the chambers website, and through the Clerk of the Court. The government should

list their exhibits by number, the defendant should list their exhibits by letter. The parties are directed to mark their exhibits sequentially prior to trial to prevent unnecessary delay during the trial. The parties are strongly encouraged to stipulate, where appropriate, to the admission of exhibits. If there any questions about this, counsel are strongly encouraged to contact the court's courtroom deputy, Ms. Little (524-6135).

5. **Witness Lists** - A witness list is required the morning of trial for the court, and the courtroom deputy.

6. **Pre-Trial Motions/Motion in Limine** - Any pre-trial motions, such as motions in limine, must be filed by **October 16, 2006**. Any motions must be accompanied by a supporting memorandum of law. Where a party can reasonably anticipate in advance of trial any significant evidentiary issue arising at trial concerning the admissibility of evidence that the party believes should be excluded, the objecting party is directed to raise the issue by way of a motion in limine within the time frame outlined above. Responses are due by **October 30, 2006**. Any outstanding motions in limine or pre-trial motions will be dealt with by the court at the pre-trial conference scheduled for **November 14, 2006, at 2:30 p.m.**

7. **Rule 404(b) Evidence** – Unless disclosure has previously been directed by the court, the government shall file any notice of intent to use evidence covered by Rule 404(b) of the Federal Rules of Evidence no later than **October 2, 2006**. Any response by the defense is due by **October 16, 2006**. The court will rule on this issue at the pretrial conference on **November 14, 2006, at 2:30 p.m.**

8. **Trial Briefs** – The parties are *not* required to file a trial brief. The court, however, is happy to review such briefs and, if time is available, encourages the filing of at least a short brief

two days in advance of trial outlining any disputed issues expected to arise at trial.

9. **Clothing for the Defendant** – If the defendant is in custody, defense counsel is directed to arrange for appropriate clothing and to have that clothing available early on the morning of trial.

10. **Plea Cutoff** – The parties must conclude any plea discussions by **October 2, 2006**.

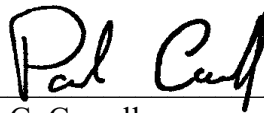
11. **Final Pretrial Conference** – A final pretrial conference is set for **November 14, 2006, at 2:30 p.m.** Any outstanding issues, including the jury instructions, the verdict form, the motion to sever, 404(b) evidence and any other issues, will be resolved at this hearing. The parties shall also come prepared to discuss and pre-admit as many exhibits as possible in preparation for trial.

If the parties have any questions or concerns about any of the foregoing, they should contact the court promptly.

SO ORDERED.

DATED this 30th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell  
United States District Judge



**FILED**

**AUG 24 2006**

**United States District Court**  
**District of Utah**

**ROBERT T. BRATHWAITE**  
**U.S. MAGISTRATE**

**UNITED STATES OF AMERICA**

**vs.**

**David E. Devall**

**JUDGMENT IN A CRIMINAL CASE**

Case Number: **2:06-cr-00398-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney: **J. MacArthur Wright**

**Date of Imposition: August 24, 2006**

☐ pleaded guilty to count(s)

☒ pleaded nolo contendere to count(s)  
which was accepted by the court.

☐ was found guilty on count(s)

**Count I**

**Title & Section**

21 USC 844

**Nature of Offense**

Possession of a controlled substance

**Count  
Number(s)**

I

☐ The defendant has been found not guilty on count(s) count

☒ Count(s) **Count II** (is)(are) dismissed on the motion of the United States.

**SENTENCE**

Pursuant to the Sentencing Reform Act of 1984, it is the judgment and order of the Court that the defendant be committed to the custody of the United States Bureau of Prisons for a term of

Upon release from confinement, the defendant shall be placed on supervised release for a term of

The defendant is placed on Probation for a term of **12 months supervised**.

The defendant shall not commit another federal, state or local crime.

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended based on the court's determination that the defendant possesses a low risk of future substance abuse. (Check if applicable.)

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

Defendant: David E. Devall  
Case Number: 2:06-cr-00398-001

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release/probation that the defendant pay any such fine or restitution in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties section of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions in this judgment.

### **STANDARD CONDITIONS OF SUPERVISED RELEASE/PROBATION**

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

Defendant: David E. Devall  
Case Number: 2:06-cr-00398-001

### SPECIAL CONDITIONS OF SUPERVISED RELEASE / PROBATION

In addition to all Standard Conditions of Supervised Release or Probation set forth above, the following Special Conditions are imposed:

1. The Defendant shall not use or possess illegal drugs.
2. The Defendant shall submit to drug/alcohol testing, as directed by the probation office, and pay a one-time \$115 fee to partially defer the costs of collection and testing. If deemed appropriate by the Court and the probation office, the defendant will pay additional costs associated with confirmation and testing of positive results reported to the Court.
3. The Defendant shall submit to the search of his/her person, residence, office or vehicle under his/her control, by a U.S. Probation Officer or any other authorized person under the immediate and personal supervision of the U.S. Probation Officer, without a search warrant, to ensure compliance with all conditions of release, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release.

### CRIMINAL MONETARY PENALTIES

#### FINE

The defendant shall pay a fine in the amount of \$ 1000.00, payable as follows:

- ☐ forthwith.
- ☐ in accordance with the Bureau of Prison's Financial Responsibility Program while incarcerated and thereafter pursuant to a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ in accordance with a schedule established by the U.S. Probation office, based upon the defendant's ability to pay and with the approval of the court.
- ☒ other:  
as directed by the probation department

- ☐ The defendant shall pay interest on any fine more than \$2,500, unless the fine is paid in full before the fifteenth day after the date of judgment, pursuant to 18 U.S.C. § 3612(f).
- ☐ The court determines that the defendant does not have the ability to pay interest and pursuant to 18 U.S.C. § 3612(f)(3), it is ordered that:
- ☐ The interest requirement is waived.
- ☐ The interest requirement is modified as follows:
- 

#### RESTITUTION

The defendant shall make restitution to the following payees in the amounts listed below:

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
----------------------------------	-----------------------	--------------------------------------

---

Defendant: David E. Devall  
Case Number: 2:06-cr-00398-001

<u>Name and Address of Payee</u>	<u>Amount of Loss</u>	<u>Amount of Restitution Ordered</u>
<b>Totals: \$ _____ \$ _____</b>		

(See attachment if necessary.) All restitution payments must be made through the Clerk of Court, unless directed otherwise. If the defendant makes a partial payment, each payee shall receive an approximately proportional payment unless otherwise specified.

☐ Restitution is payable as follows:

- ☐ in accordance with a schedule established by the U.S. Probation Office, based upon the defendant's ability to pay and with the approval of the court.
- ☐ other: \_\_\_\_\_

☐ The defendant having been convicted of an offense described in 18 U.S.C. § 3663A(c) and committed on or after 04/25/1996, determination of mandatory restitution is continued until \_\_\_\_\_ pursuant to 18 U.S.C. § 3664(d)(5) (not to exceed 90 days after sentencing).

☐ An Amended Judgment in a Criminal Case will be entered after such determination

#### SPECIAL ASSESSMENT

The defendant shall pay a special assessment in the amount of \$ 25.00, payable as follows:

☐ forthwith.

☒ as directed by the probation department

#### PRESENTENCE REPORT / OBJECTIONS

☐ The court adopts the factual findings and guideline application in the presentence report.

☐ The court adopts the factual findings and guideline application in the presentence report, except as set forth below:

#### Guideline Range Determined by the Court:

Total Offense Level: \_\_\_\_\_

Criminal History Category: \_\_\_\_\_

Imprisonment Range: \_\_\_\_\_ to \_\_\_\_\_ months

Supervised Release Range: \_\_\_\_\_ to \_\_\_\_\_ years

Fine Range: \_\_\_\_\_ to \_\_\_\_\_

#### RECOMMENDATION

☐ Pursuant to 18 U.S.C. § 3621(b)(4), the Court makes the following recommendations to the Bureau of Prisons: \_\_\_\_\_

Defendant: David E. Devall  
Case Number: 2:06-cr-00398-001

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**CUSTODY/SURRENDER**

- ☐ The defendant is remanded to the custody of the United States Marshal.
- ☐ The defendant shall surrender to the Washington County Correctional Facility at Purgatory at \_\_\_\_\_ on \_\_\_\_\_.
- ☐ The defendant shall report to the \_\_\_\_\_ institution designated by the Bureau of Prisons by \_\_\_\_\_ Institution's local time, on \_\_\_\_\_.

**DATE:**

8-24-06



**Robert T. Braithwaite**  
**United States Magistrate Judge**

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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

ALBERTO LINARES PEREZ  
Defendant.

ORDER WITHDRAWING  
PREVIOUS ORDER TO THE US  
ATTORNEY'S OFFICE AND  
ARRANGING FUTURE  
SCHEDULING

Case No. 2:06-CR-00423 PGC

---

On August 22, 2006, the court requested the U.S. Attorney's Office to provide any publically available information regarding the charging practices for alleged violations of 18 U.S.C. § 1028A [#18]. The court now WITHDRAWS that previously filed order.

The court will meet with the parties as scheduled on September 8, 2006, at 11:30 AM to arrange future scheduling in this matter, including a schedule for any appropriate motions.

SO ORDERED.

DATED this 30t day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read "Paul Cassell", written over a horizontal line.

Paul G. Cassell  
United States District Judge

**FILED**

**AUG 24 2006**

IN THE UNITED STATES DISTRICT COURT **ROBERT T. BRAITHWAITE**  
**U.S. MAGISTRATE**

FOR THE DISTRICT OF UTAH CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v

Richard Werner

Defendant.

**ORDER OF DISMISSAL**

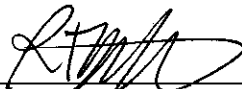
Case # 2:06-cr-00428

Magistrate Judge Robert T. Braithwaite

Having heard the evidence at trial, the court finds that the defendant has not been proven guilty beyond a reasonable doubt. The court therefore finds the defendant not guilty as charged and orders the case dismissed, with prejudice.

DATED this 24 day of Aug, 2006.

BY THE COURT:



ROBERT T. BRAITHWAITE  
United States Magistrate Judge



**FILED**

**AUG 24 2006**

**United States District Court  
District of Utah**

**ROBERT T. BRAITHWAITE  
U.S. MAGISTRATE**

**UNITED STATES OF AMERICA**

**JUDGMENT IN A CRIMINAL CASE**

**vs.**

**Scott B. Tipton**

Case Number: **2:06-cr-0450-001**

Plaintiff Attorney: **Paul Graf**

Defendant Attorney:

**Date of Imposition: August 24, 2006**

**DEFENDANT:**

☒  
☐

pleaded guilty to count(s)

**No contest to Count I**

**Title & Section**  
36 CFR 2.35 (c)

**Nature of Offense**  
Public intoxication

**Count  
Number(s)**  
I

☐ Count(s) \_\_\_\_\_ (is)(are) dismissed on the motion of the United States.

**The Defendant is placed on bench probation for a period of 4 months. The Defendant shall pay fine and fees in full on or before the expiration of the probation period.**

**CRIMINAL MONETARY PENALTIES**


**TOTAL FINE: Count I: \$ 300.00**

**ASSESSMENT: Count I: \$ 25.00**

**Due by November 22, 2006**

Date

**8-24-06**

  
Robert T. Braithwaite, United States Magistrate Judge  
Name and Title of Judicial Officer

FILED  
U.S. DISTRICT COURT

2025 AUG 31 P 1: 41

## HISTORY OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**RONALD J. YENGICH (#3580)**  
**YENGICH, RICH & XAIZ**  
**Attorneys for Defendant**  
**175 East 400 South, Suite 400**  
**Salt Lake City, Utah 84111**  
**Telephone: (801) 355-0320**

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

V.

DAVID TODD BARTLETT,

**Defendant.**

ORDER CONTINUING  
JURY TRIAL

Case No. 2:06 CR 457

Honorable Dee Benson

Based upon the motion and stipulation of counsel and for good cause shown;

THIS COURT HEREBY FINDS that the ends of justice served in granting a continuance in the above-entitled matter outweigh the best interests of the public and the defendants in a speedy trial. The Court further finds that the parties have, despite the exercise, of due diligence, not yet completed plea negotiations.

Pursuant to Title 18, § 3161(8)(A) and (B)(iv) of the Speedy Trial Act, the Jury Trial date in this matter, currently set for September 5<sup>th</sup>, 6<sup>th</sup>, and 7<sup>th</sup>, 2006, is hereby continued. The period of delay resulting from this continuance is hereby ordered excludable pursuant to the Act.

IT IS FURTHER ORDERED that the Jury Trial be continued to the 6 day of Nov, 2006, at the hour of 8:30 a.m./p.m., before Judge Benson.

SIGNED BY MY HAND this \_\_\_\_\_ day of August, 2006.

BY THE COURT:

  
HONORABLE DEE BENSON  
United States District Court Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 9:51

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

DISTRICT OF UTAH, CENTRAL DIVISION

DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

v.

JARED WAYNE REYNOLDS,

Defendant.

**ORDER TO CONTINUE  
JURY TRIAL**

Case No. 2:06-CR-489 TS

Based on the motion to continue trial filed by Defendant in the above-entitled case, and good cause appearing,

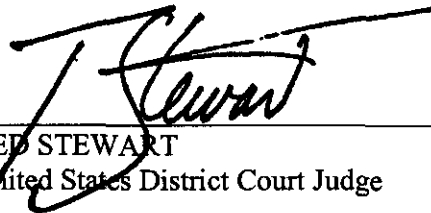
It is hereby ORDERED that the three-day trial previously scheduled to begin September 18, 2006, is hereby continued to this 18th day of December, 2006, at 8:30 a.m.

Pursuant to 18 U.S.C. § 3161(h), the Court finds the ends of justice served by such a continuance outweigh the best interests of the public and the Defendant in a speedy trial.

Accordingly, the time between the date of this order and the new trial date set forth in paragraph one above is excluded from speedy trial computation.

Dated this 30th day of August, 2006.

BY THE COURT:

  
TED STEWART  
United States District Court Judge

**MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

JUDGE: Hon. Tena Campbell

COURT REPORTER: Ray Fenlon

COURTROOM DEPUTY: Mary Jane McNamee

INTERPRETER: Grant Anderson

CASE NO. 2:06-cr-00490 TC

USA v. Oscar Cortez-Cid

Approved By: \_\_\_\_\_

**APPEARANCE OF COUNSEL**

Pla      Mark Vincent  
Dft      Henri Sisneros

DATE: 08/30/2006

MATTER SET: Status Conference

**DOCKET ENTRY:**

The dft is present and in custody. Mr. Henri Sisneros begins to explain the issue of the dft's identity and age. Mr. Mark Vincent arrives and informs the Court that he has filed a motion to dismiss the Indictment against the dft, Omar Cortes-Cid. The Court grants the motion in open Court and will execute the minute entry.

  
Tena Campbell  
United States District Court Judge

8-30-2006  
August 30, 2006

**MINUTES OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH**

JUDGE: Hon. Tena Campbell

COURT REPORTER: Ray Fenlon

COURTROOM DEPUTY: Mary Jane McNamee

INTERPRETER: Grant Anderson

CASE NO. 2:06-cr-00490 TC

USA v. Oscar Cortez-Cid

Approved By: \_\_\_\_\_

**APPEARANCE OF COUNSEL**


Pla      Mark Vincent  
Dft      Henri Sisneros

DATE: 08/30/2006

MATTER SET: Status Conference

**DOCKET ENTRY:**

The dft is present and in custody. Mr. Henri Sisneros begins to explain the issue of the dft's identity and age. Mr. Mark Vincent arrives and informs the Court that he has filed a motion to dismiss the Indictment against the dft, Omar Cortes-Cid. The Court grants the motion in open Court and will execute the minute entry.

  
Tena Campbell  
United States District Court Judge

8-30-2006  
August 30, 2006

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT

RECEIVED

2006 AUG 31 A 10:09

DISTRICT OF UTAH, CENTRAL DIVISION

AUG 30 2006

DISTRICT OF UTAH

OFFICE OF  
JUDGE TENA CAMPBELL

BY: DEPUTY CLERK  
UNITED STATES OF AMERICA, : 2:06-CR-490-TC  
  
Plaintiff, :  
  
vs. : ORDER GRANTING LEAVE OF  
COURT TO FILE A DISMISSAL  
OF THE INDICTMENT AGAINST  
OMAR CORTES-CID, : OMAR CORTES-CID.  
  
Defendant.

Based upon the motion of the United States of America,  
and for good cause appearing, the Court hereby grants leave  
under Fed.R.Crim.P. 48(a) to allow the United States  
Attorney to file a dismissal without prejudice for the above  
referenced Indictment against the defendant, OMAR CORTES-  
CID.

DATED this 30 day of AUGUST, 2006.

BY THE COURT:



TENA CAMPBELL, Judge  
United States District Court

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

2006 AUG 31 P 2:52

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ERIK SILVA, et al.,

Defendants.

ORDER OF REFERENCE

Civil No. 2:06 CR 490 TC

IT IS ORDERED that, as authorized by 28 U.S.C. § 636(b)(1)(A) and the rules of this court, the above entitled case (all defendants) is referred to United States Magistrate Judge Paul M. Warner. Judge Warner is directed to hear and determine any nondispositive matters pending before the court.

DATED this 31st day of August, 2006.

BY THE COURT:

*Tena Campbell*

TENA CAMPBELL  
United States District Judge



SAM HARKNESS (9448)  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place, Eleventh Floor  
Post Office Box 45000  
Salt Lake City, Utah 84145-5000  
Telephone: (801) 521-9000

Attorney for Defendant Feliciano Gonzalez-Cuevas

FILED  
U.S. DISTRICT COURT  
**RECEIVED**

2006 AUG 29 P 3:34 14 2006

DISTRICT OF UTAH OFFICE OF  
JUDGE TENA CAMPBELL  
BY: \_\_\_\_\_  
DEPUTY CLERK

---

IN THE UNITED STATES DISTRICT COURT

DISTRICT OF UTAH, CENTRAL DIVISION

---

UNITED STATES OF AMERICA,

**ORDER**

Plaintiff,

2:06-CR-0522 TC

vs .

District Judge Tena Campbell

FELICIANO GONZALEZ-CUEVAS AKA  
FELICIANO GONZALEZ-QUEVAS,

Defendant.

---

Based on the motion of the defendant and for good cause shown, the Court orders the United States Probation and Pre-Trial Services to institute a pre-plea presentence investigation of the defendant. As a result, the Court will conduct a hearing on ~~September~~ <sup>October</sup> 6, 2006 at 2:30 p.m. at which time the defendant will be sentenced.

DATED this 16 day of August, 2006.

BY THE COURT

By

Tena Campbell  
Hon. Tena Campbell

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:09

RECEIVED CLERK

AUG 29 2006

IN THE UNITED STATES DISTRICT COURT

RECEIVED

U.S. DISTRICT COURT

DISTRICT OF UTAH

BY: ~~DEPT. CLERK~~  
AUG 31 2006

OFFICE OF

JUDGE TENA CAMPBELL

2:06 CR 00563 TC

UNITED STATES OF AMERICA,

Plaintiff,

ORDER FOR PRO HAC VICE  
ADMISSION

vs.

WILLIAM KURT DOBSON,

Defendant.

It appearing to the Court that Petitioners meet the pro hac vice admission requirements of DUCivR 83-1.1(d), the motion for the admission pro hac vice of Scott L. Garland and Josh Goldfoot in the United States District Court, District of Utah in the subject case is GRANTED.

Dated this 30 day of August, 2006.

  
U.S. District Judge

NO FEE REQUIRED

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

Counsel must have all exhibits premarked by the clerk for the district judge before trial.

If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

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**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

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**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

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**United States District Court  
for the District of Utah**

**Criminal Pretrial Instructions**

The prosecution has an open file policy.

Issues as to witnesses do not exist in this matter, but defense counsel will make arrangements for subpoenas, if necessary, as early as possible to allow timely service.

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If negotiations are not completed for a plea by the plea deadline, the case will be tried.

In cases assigned to Judge Cassell, counsel are directed to meet and confer about the possibility of a plea, and before the deadline report to chambers whether the matter will proceed to trial.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

---

TERRY JAMES MARBLE,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-11 TC
	)	
v.	)	District Judge Tena Campbell
	)	
PAUL MC GARRY,	)	<b>O R D E R</b>
	)	
Defendant.	)	Magistrate Judge Brooke Wells

---

Plaintiff, Terry James Marble, has filed a *pro se* prisoner civil rights complaint.<sup>1</sup> Plaintiff's application to proceed *in forma pauperis* has been granted. Plaintiff now moves for appointed counsel and service of process.

The Court first considers the motion for appointed counsel. Plaintiff has no constitutional right to counsel.<sup>2</sup> However, the Court may in its discretion appoint counsel for indigent inmates.<sup>3</sup> "The burden is upon the applicant to convince the court that there is sufficient merit to his claim to warrant the appointment of counsel."<sup>4</sup>

When deciding whether to appoint counsel, the district court should consider a variety of factors, "including 'the merits of the litigant's claims, the nature of the factual issues raised in

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See *Carper v. Deland*, 54 F.3d 613, 616 (10th Cir. 1995); *Bee v. Utah State Prison*, 823 F.2d 397, 399 (10th Cir. 1987).

<sup>3</sup>See 28 U.S.C.S. § 1915(e) (1) (2006); *Carper*, 54 F.3d at 617; *Williams v. Meese*, 926 F.2d 994, 996 (10th Cir. 1991).

<sup>4</sup>*McCarthy v. Weinberg*, 753 F.2d 836, 838 (10th Cir. 1985).



the claims, the litigant's ability to present his claims, and the complexity of the legal issues raised by the claims.'"<sup>5</sup>

Considering the above factors, the Court concludes here that (1) it is not clear at this point that Plaintiff has asserted a colorable claim; (2) the issues in this case are not complex; and (3) Plaintiff is not incapacitated or unable to adequately function in pursuing this matter. Thus, the Court denies for now Plaintiff's motion for appointed counsel.

The Court next denies Plaintiff's motion for service of process. This motion is unnecessary because Plaintiff is proceeding *in forma pauperis*.<sup>6</sup> In such cases, "[t]he officers of the court shall issue and serve all process, and perform all duties in such cases."<sup>7</sup> The Court will screen Plaintiff's complaint at its earliest convenience and determine whether to dismiss it or order it to be served upon Defendants.<sup>8</sup> Plaintiff need do nothing to trigger this process.

IT IS HEREBY ORDERED that:

(1) Plaintiff's request for appointed counsel is denied, (see File Entry # 4); however, if, after the case is screened,

---

<sup>5</sup>*Rucks v. Boergermann*, 57 F.3d 978, 979 (10th Cir. 1995) (quoting *Williams*, 926 F.2d at 996); accord *McCarthy*, 753 F.2d at 838-39.

<sup>6</sup>See 28 U.S.C.S. § 1915 (2006).

<sup>7</sup>See *id.* § 1915(d).

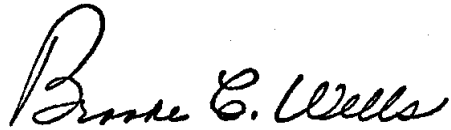
<sup>8</sup>See *id.* § 1915A.

it appears that counsel may be needed or of specific help, the Court will ask an attorney to appear pro bono on Plaintiff's behalf.

(2) Plaintiff's motion for service of process is denied, (see File Entry # 5); however, if, after the case is screened, it appears that this case has merit and states a claim upon which relief may be granted, the Court will order service of process.

DATED this 31st day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Brooke C. Wells". The signature is written in a cursive, flowing style. The first letter "B" is large and loops around the first part of the name. The "C" is also large and loops around the "W". The "Wells" is written in a more compact, cursive script.

---

BROOKE C. WELLS  
United States Magistrate Judge

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:35

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

J. David Nelson (2385)  
Robert D. Dahle (4819)  
NELSON, SNUFFER, DAHLE & POULSEN, P.C.  
10885 South State Street  
Sandy, Utah 84070  
(801) 576-1400  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

INTERNATIONAL AUTOMATED  
SYSTEMS, INC.;

Plaintiff,

vs.

DIGITAL PERSONA, INC.; and JOHN  
DOES 1-20;

Defendants.

(Proposed)  
**ORDER OF CONSOLIDATION  
AND  
ORDER OF CONTINUANCE**

Case No.: 2:06-CV-00072


Judge: Dee Benson  
Magistrate Judge: Brook C. Wells

The Stipulation and Joint Motion to Consolidate and Stipulation and Joint Motion to Continue Initial Pretrial Conference of Plaintiff International Automated Systems, Inc. ("IAS"), Defendant Digital Persona, Inc. ("Digital"), and Microsoft Corporation ("Microsoft"), Defendant in *International Automated Systems, Inc. v. Microsoft Corporation et al*, United States for the District Court of Utah, Central Division, Case No. 2:06-CV-00114-TC, ("*IAS v. Microsoft*"), as well as the consent to the consolidation by Microsoft Corporation, having been considered by the Court and with good cause appearing, the Joint Motions are granted.

It is therefore ORDERED, ADJUDGED, and DECREED, that the case of *International Automated Systems, Inc. v. Microsoft Corporation et al*, United States for the District Court of Utah, Central Division, Case No. 2:06-CV-00114-TC, is hereby consolidated into the above entitled case.

It is further ORDERED, ADJUDGED, and DECREED that the Initial Pretrial Conference set in the above entitled case for September 13, 2006 at 9:00 a.m. is hereby postponed until November 8, 2006, at 2:30 p.m., the date and time presently set for the Initial Pretrial Conference in the case of *International Automated Systems, Inc. v. Microsoft Corporation et al*, Case No. 2:06-CV-00114-TC, at which time a Initial Pretrial Conference for the consolidated case shall be convened.

Dated this 30<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Judge Dee Benson  
Magistrate Judge Brook C. Wells

Approved as to form:

/s/ Edwin H. Taylor  
Edwin H. Taylor  
Attorney for Defendant Digital Persona, Inc.

/s/ Jared S. Goff  
Jared S. Goff  
Attorney for Microsoft Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of August, 2006, I electronically filed the foregoing ORDER OF CONSOLIDATION AND ORDER OF CONTINUANCE with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

Joseph R. Bond  
Bond Law Office, LLC  
1680 East 1350 North  
Heber City, UT 84032

Edwin H. Taylor  
Lester J. Vincent  
Blakely, Sokoloff, Taylor & Zafman, LLP  
1279 Oakmead Parkway  
Sunnyvale, CA 94085

/s/ J. David Nelson

**CERTIFICATE OF SERVICE FOR NON-CM/ECF SYSTEM FILERS**

I hereby certify that on the 25<sup>th</sup> day of August, 2006, a true and correct copy of the foregoing ORDER OF CONSOLIDATION AND ORDER OF CONTINUANCE, was mailed postage prepaid and e-mailed to the following parties that do not receive e-mail notices for the above reference case pursuant to the Court's Manual Notice List:

Jared S. Goff  
jared.goff@klarquist.com  
John D. Vandenberg  
john.vandenberg@klarquist.com  
KLARQUIST SPARKMAN, LLP  
121 S. W. Salmon Street, Suite 1600  
Portland, Oregon 97204

/s/ J. David Nelson

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:35

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

J. David Nelson (2385)  
Robert D. Dahle (4819)  
NELSON, SNUFFER, DAHLE & POULSEN, P.C.  
10885 South State Street  
Sandy, Utah 84070  
(801) 576-1400  
Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

INTERNATIONAL AUTOMATED  
SYSTEMS, INC.;

Plaintiff,

vs.

DIGITAL PERSONA, INC.; and JOHN  
DOES 1-20;

Defendants.

(Proposed)  
**ORDER OF CONSOLIDATION  
AND  
ORDER OF CONTINUANCE**

Case No.: 2:06-CV-00072


Judge: Dee Benson  
Magistrate Judge: Brook C. Wells

The Stipulation and Joint Motion to Consolidate and Stipulation and Joint Motion to Continue Initial Pretrial Conference of Plaintiff International Automated Systems, Inc. ("IAS"), Defendant Digital Persona, Inc. ("Digital"), and Microsoft Corporation ("Microsoft"), Defendant in *International Automated Systems, Inc. v. Microsoft Corporation et al*, United States for the District Court of Utah, Central Division, Case No. 2:06-CV-00114-TC, ("*IAS v. Microsoft*"), as well as the consent to the consolidation by Microsoft Corporation, having been considered by the Court and with good cause appearing, the Joint Motions are granted.

It is therefore ORDERED, ADJUDGED, and DECREED, that the case of *International Automated Systems, Inc. v. Microsoft Corporation et al*, United States for the District Court of Utah, Central Division, Case No. 2:06-CV-00114-TC, is hereby consolidated into the above entitled case.

It is further ORDERED, ADJUDGED, and DECREED that the Initial Pretrial Conference set in the above entitled case for September 13, 2006 at 9:00 a.m. is hereby postponed until November 8, 2006, at 2:30 p.m., the date and time presently set for the Initial Pretrial Conference in the case of *International Automated Systems, Inc. v. Microsoft Corporation et al*, Case No. 2:06-CV-00114-TC, at which time a Initial Pretrial Conference for the consolidated case shall be convened.

Dated this 30<sup>th</sup> day of August, 2006.

  
\_\_\_\_\_  
Judge Dee Benson  
Magistrate Judge Brook C. Wells

Approved as to form:

/s/ Edwin H. Taylor  
Edwin H. Taylor  
Attorney for Defendant Digital Persona, Inc.

/s/ Jared S. Goff  
Jared S. Goff  
Attorney for Microsoft Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that on this 25<sup>th</sup> day of August, 2006, I electronically filed the foregoing ORDER OF CONSOLIDATION AND ORDER OF CONTINUANCE with the Clerk of the Court using the CM/ECF System which sent notification of such filing to the following:

Joseph R. Bond  
Bond Law Office, LLC  
1680 East 1350 North  
Heber City, UT 84032

Edwin H. Taylor  
Lester J. Vincent  
Blakely, Sokoloff, Taylor & Zafman, LLP  
1279 Oakmead Parkway  
Sunnyvale, CA 94085

/s/ J. David Nelson

**CERTIFICATE OF SERVICE FOR NON-CM/ECF SYSTEM FILERS**

I hereby certify that on the 25<sup>th</sup> day of August, 2006, a true and correct copy of the foregoing ORDER OF CONSOLIDATION AND ORDER OF CONTINUANCE, was mailed postage prepaid and e-mailed to the following parties that do not receive e-mail notices for the above reference case pursuant to the Court's Manual Notice List:

Jared S. Goff  
jared.goff@klarquist.com  
John D. Vandenberg  
john.vandenberg@klarquist.com  
KLARQUIST SPARKMAN, LLP  
121 S. W. Salmon Street, Suite 1600  
Portland, Oregon 97204

/s/ J. David Nelson



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 1: 54

QUALITY MULTIMEDIA, INC., a Utah  
corporation,

Plaintiff,

vs.

ABC / KANE PRODUCTIONS  
INTERNATIONAL, INC., a Delaware  
Corporation, and DEVILLIER DONEGAN  
ENTERPRISES, L.P., a Delaware limited  
Liability partnership,

Defendant.

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**ORDER**

Case No. 2:06CV00206

Honorable Ted Stewart

Defendant Devillier Donegan Enterprises, L.P., having moved this Court for an order granting it an additional period of twenty (20) days, from August 29, 2006 to September 19, 2006, to retain counsel in Utah and to answer or otherwise respond to the Amended Complaint, and

Based on the attached Ex Parte Motion, and for good cause shown, the motion is granted and defendant Devillier Donegan Enterprises, L.P. is granted an additional period of twenty (20) days, from August 29, 2006 to September 19, 2006, to retain counsel in Utah and to answer or otherwise respond to the Amended Complaint.

Dated: August 30, 2006

  
Hon. Ted Stewart

FILED  
U.S. DISTRICT COURT

2006 AUG 31 P 1:58

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

Matthew L. Anderson (A7459)  
Scott M. Petersen (A7599)  
FABIAN & CLENDENIN,  
A Professional Corporation  
215 South State Street, 12<sup>th</sup> Floor  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: (801) 531-8900  
Facsimile: (801) 596-2814  
[manderson@fabianlaw.com](mailto:manderson@fabianlaw.com)  
[spetersen@fabianlaw.com](mailto:spetersen@fabianlaw.com)

Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

THE MILLER FAMILY LIVING TRUST,  
suing individually and derivatively as a  
shareholder of TTR HP, Inc. dba as Aero  
Exhaust, a Nevada corporation,

Plaintiff,

vs.

TTR HP, Inc. dba as Aero Exhaust, a Nevada  
corporation, BRYAN HUNSAKER, an  
individual, KENDALL WOOLSENHULME, an  
individual, DAVID RICHARDS, an individual,  
STEVEN J. WRIDE, an individual, and John  
Does 1-5.

Defendants.

**ORDER GRANTING JOINT  
MOTION AND STIPULATION TO  
EXTEND PERIOD FOR  
RESPONDING TO DISCOVERY**

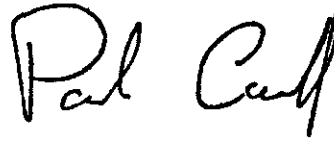
Case No. 2:06cv00345 PGC

Judge Paul G. Cassell

The parties' Joint Motion and Stipulation to Extend Period for Responding to Discovery (the "Joint Motion and Stipulation") is properly before this Court. Based on the Joint Motion and Stipulation and good cause appearing therefor

IT IS HEREBY ORDERED that the deadline for Defendants to respond to Plaintiff's First Set of Interrogatories, Requests for Production, and Requests for Admissions is extended to September 29, 2006.

DATED this 31 day of August, 2006.



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The Honorable Paul Cassell  
United States District Court Judge

Approved as to form:

/s/ Kimberly Neville  
Bryon J. Benevento  
Kimberly Neville  
Snell & Wilmer  
Attorneys for Plaintiff

ND: 4829-0562-8929, Ver 1

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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MARCOS MORENO-MONTANO,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-373 DAK
	)	
v.	)	District Judge Dale A. Kimball
	)	
GREG JACQUERT et al.,	)	<b>O R D E R</b>
	)	
Respondents.	)	Magistrate Judge Brooke Wells

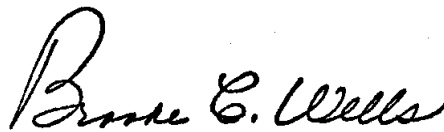
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Petitioner, Marcos Moreno-Montano, has filed a *habeas corpus* petition. See [28 U.S.C.S. § 2254 \(2006\)](#).

IT IS HEREBY ORDERED that, by October 13, 2006, the Utah Attorney General must respond to the petition.

DATED this 31st day of August, 2006.

BY THE COURT:



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BROOKE C. WELLS  
United States Magistrate Judge

PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY

United States District Court		District <u>Utah</u>
Name (under which you were convicted): <u>Marcos Moreno-Montano</u>		Docket or Case No.: <u>001910993</u>
Place of Confinement: <u>Central Utah Correctional Facility</u>		Prisoner No.: <u>32137</u> BY: <u>DEPUTY CLERK</u>
Petitioner (include the name under which you were convicted): <u>Marcos Moreno-Montano</u>		Respondent (authorized person having custody of petitioner): <u>Greg Tacquert Warden and</u> <u>Clark Low Warden</u> <u>State of Utah et.al.</u>
The Attorney General of the State of <u>Utah</u>		

PETITION

- (a) Name and location of court that entered the judgment of conviction you are challenging: Third District Court Salt Lake City, Utah  
Salt Lake County
- (b) Criminal docket or case number (if you know): 001910993
- (a) Date of the judgment of conviction (if you know): April 11, 2001 or Thereabouts
- (b) Date of sentencing: \_\_\_\_\_
- Length of sentence: 10 years To Life, 3 years To Life.
- In this case, were you convicted on more than one count or of more than one crime? Yes ☒ No ☐
- Identify all crimes of which you were convicted and sentenced in this case: Rape of a  
child a First degree Felony (cnt I), Attempted  
Aggravated Sex Abuse of a child (cnt. II), a  
First degree Felony
- (a) What was your plea? (Check one)
 

(1) Not guilty <input checked="" type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>
- (b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? not guilty  
To both counts

Judge Dale A. Kimball  
DECK TYPE: Civil  
DATE STAMP: 06/07/2006 @ 13:58:30  
CASE NUMBER: 2:06CV00373 DAK

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒ *Translational problems and advice of counsel*

8. Did you appeal from the judgment of conviction?

Yes ☒ No ☐

9. If you did appeal, answer the following:

(a) Name of court: *Utah Supreme Court. Poured to Utah Court of Appeals*

(b) Docket or case number (if you know): *20010500-SC*

(c) Result: *affirmed*

(d) Date of result (if you know): *May 9, 2002*

(e) Citation to the case (if you know): *(unpublished opinion)*

(f) Grounds raised: *Failure to strike a juror for cause*

(g) Did you seek further review by a higher state court? Yes ☒ No ☐

If yes, answer the following:

(1) Name of court: *Third District Court and Court of Appeals*

(2) Docket or case number (if you know): *H020901755 and 20020597-CA*

(3) Result: *dismissed because direct appeal pending (65(c))*

(4) Date of result (if you know): *6-10-02*

(5) Citation to the case (if you know):

(6) Grounds raised: *Prosecutorial misconduct, violation of speedy trial insufficient evidence.*

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐

If yes, answer the following:

(1) Docket or case number (if you know): *20020597-CA*

*Court of Appeals → <sup>Utah</sup>sup. CT → back to Court of Appeals*

(2) Result: Denied Certiorary without written legal analysis

(3) Date of result (if you know): no written opinion?

(4) Citation to the case (if you know): Same as above

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: Utah Court of Appeals

(2) Docket or case number (if you know): 20020597-CA

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: Petition for "writ of" extraordinary relief

(5) Grounds raised: prosecutorial misconduct, violation of right to speedy trial, insufficient evidence

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: dismissed for failure to submit pleading in time

(8) Date of result (if you know): uncertain

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: The United States District Court of Utah

(2) Docket or case number (if you know): 2:03-CV-106

(3) Date of filing (if you know): 23 day of April 2003

(4) Nature of the proceeding: § 2254-petition for extraordinary relief

(5) Grounds raised: Bad Faith Conduct by the State Biased Judge, Multiplicitous charges, ineffective Assistance of Counsel. (i.e. Structural error).

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☐

(7) Result: dismissed with out prejudice

(8) Date of result (if you know): August 25, 2003

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: Tenth District Court

(2) Docket or case number (if you know): 03-4215

(3) Date of filing (if you know): September 16, 2003

(4) Nature of the proceeding: Appeal to the United States C.O.A. 10th Cir.

(5) Grounds raised: Bad Faith by The State, biased Judge  
Multiplicitous Charges, ineffective assistance  
of counsel. (i.e. Structural error).

(6) Did you receive a hearing where evidence was given on your petition, application, or motion? Yes ☐ No ☒

(7) Result: dismissed

(8) Date of result (if you know): March 19, 2004

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☒ No ☐

(2) Second petition: Yes ☒ No ☐

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not:



12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

GROUND ONE: Tried by a biased adjudicator

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Judge Livingston presided over the preliminary hearing and decided there was probable cause to bind Mr. Montano over. He subsequently presided over Mr. Montano's second (2d) trial based upon the same? (offense)? evidence

- (b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

- (c) Direct Appeal of Ground One:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: I don't law and I was Trasting my Attorney

- (d) Post-Conviction Proceedings:

- (1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

- (2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: Writ of Certiary (65(c))

Name and location of the court where the motion or petition was filed: Third District Court of Utah

Docket or case number (if you know): 050911087 and 001910993

Date of the court's decision: Sep-19-2005 and May 16-2005

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Utah Court of Appeals

Docket or case number (if you know): 20050904-CA

Date of the court's decision: December 15-2005

Result (attach a copy of the court's opinion or order, if available): dismissed as frivolous on its face

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: writ of certiorary to the Utah Supreme Court  
case # 20060121-SC. denied

GROUND TWO: Mr. Montano was tried and (charged) for multiple charges arising from a single offense

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Mr. Montano already present exhibits with the supplemental memorandum of points and authorities in his previous petition case # 2:03-CV-106

(b) If you did not exhaust your state remedies on Ground Two, explain why:

(c) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: my counsel was in charge of the direct Appeal

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 65(c) & writ of certiorary

Name and location of the court where the motion or petition was filed: third District Court of Utah

Docket or case number (if you know): 050911087 and 001910993

Date of the court's decision: sep-19-2005 and May 16-2005

Result (attach a copy of the court's opinion or order, if available): dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Utah Court of Appeals

Docket or case number (if you know): 20050904-CA

Date of the court's decision: December 15- 2005

Result (attach a copy of the court's opinion or order, if available): dismissed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: \_\_\_\_\_

- (e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: Writ of Certiorary to the Utah Supreme Court

GROUND THREE: Ineffective Assistance of counsel

- (a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
Failure to raise obvious structural error. Failure of zealous representation because of conflict of interest

- (b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

(c) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why: I am not a Lawyer I have Translational problems and was victimized because of my inability to understand my "Lawyers" very well.

## (d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☒ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: 65(c) and writ of Certiorary

Name and location of the court where the motion or petition was filed: Third District Court of Utah

Docket or case number (if you know): 050911087 and 001910993

Date of the court's decision: Sep-19-2005 and May 16-2005

Result (attach a copy of the court's opinion or order, if available): dismissed

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☒ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☒ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: Utah Court of Appeals

Docket or case number (if you know): 20050904-CA

Date of the court's decision: December 15-2005

Result (attach a copy of the court's opinion or order, if available): dismissed

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) Other Remedies: Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: writ

of Certiorary To the Utah Supreme Court

GROUND FOUR: Falsify documents of the preliminary hearing

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

To support this claim I need The Federal District Court to expedite a order to the Third District Court or the Attorney general to provide Mr. Montano with Transcrip's and Court Documents

(b) If you did not exhaust your state remedies on Ground Four, explain why: I have not Acces to Court document's to support this claim also I raise this as insufficient evidence as a prose I have the right to lead way's

(c) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: my Attorney don't want to raised this issue

(d) Post-Conviction Proceedings:

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court? Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☒

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☒

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue: because I don't have access to court documents

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☒

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: falsify documents because

I have not access to court documents to support this claim

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: can be falsify documents, I have not

access to court documents to support this claim

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☒ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. In the United States District Court for the District of Utah Case No 2:03-CV-106 DAK. (1) biased Judge (2) charged with and tried on multiple charges and (3) ineffectively assisted by his counsel. August 25-2003 dismissed without prejudice, because Mr. Montano, still had remedies in the State Court

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: John O'Connell Jr.

(b) At arraignment and plea: John O'Connell Jr.

(c) At trial: John O'Connell Jr.

(d) At sentencing: John O'Connell Jr.

(e) On appeal: John O'Connell Jr. and Catherine Lilly.

(f) In any post-conviction proceeding: my self

(g) On appeal from any ruling against you in a post-conviction proceeding: my self

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒



(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. \* because I Applide on Time in Federal Court but The Federal Court order my case To go back To Finish my remedies in the State and at The Completion go back To Federal Court Look's Like The Federal Court Know's The state was going To act in a Bad Faith again

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —

(continued...)

Therefore, petitioner asks that the Court grant the following relief: To which he may be entitled in this proceeding 28 USC § 2254

or any other relief to which petitioner may be entitled.

\_\_\_\_\_  
Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Petition for Writ of Habeas Corpus was placed in the prison mailing system on April-3-2006 (month, date, year).

Executed (signed) on \_\_\_\_\_ (date).

Marcos M. Montano

Signature of Petitioner

\*(...continued)

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

If the person signing is not petitioner, state relationship to petitioner and explain why petitioner is not signing this petition. \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

**Petition for Relief From a Conviction or Sentence  
By a Person in State Custody**

(Petition Under 28 U.S.C. § 2254 for a Writ of Habeas Corpus)

RECEIVED CLERK

**Instructions**

APR 13 2006

U.S. DISTRICT COURT

1. To use this form, you must be a person who is currently serving a sentence under a judgment against you in a state court. You are asking for relief from the conviction or the sentence. This form is your petition for relief.
2. You may also use this form to challenge a state judgment that imposed a sentence to be served in the future, but you must fill in the name of the state where the judgment was entered. If you want to challenge a federal judgment that imposed a sentence to be served in the future, you should file a motion under 28 U.S.C. § 2255 in the federal court that entered the judgment.
3. Make sure the form is typed or neatly written.
4. You must tell the truth and sign the form. If you make a false statement of a material fact, you may be prosecuted for perjury.
5. Answer all the questions. You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit a brief or arguments, you must submit them in a separate memorandum.
6. You must pay a fee of \$5. If the fee is paid, your petition will be filed. If you cannot pay the fee, you may ask to proceed *in forma pauperis* (as a poor person). To do that, you must fill out the last page of this form. Also, you must submit a certificate signed by an officer at the institution where you are confined showing the amount of money that the institution is holding for you. If your account exceeds \$ \_\_\_\_\_, you must pay the filing fee.
7. In this petition, you may challenge the judgment entered by only one court. If you want to challenge a judgment entered by a different court (either in the same state or in different states), you must file a separate petition.
8. When you have completed the form, send the original and two copies to the Clerk of the United States District Court at this address:  
  
Clerk, United States District Court for the District of Utah  
Address: 350 S Main St, Rm 150  
City, State Zip Code: Salt Lake City UT 84101
9. **CAUTION:** You must include in this petition all the grounds for relief from the conviction or sentence that you challenge. And you must state the facts that support each ground. If you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.
10. **CAPITAL CASES:** If you are under a sentence of death, you are entitled to the assistance of counsel and should request the appointment of counsel.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

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RUBEN RUDY TRUJILLO,	)	
	)	
Petitioner,	)	Case No. 2:06-CV-427 TC
	)	
v.	)	District Judge Tena Campbell
	)	
STATE OF UTAH,	)	<b>O R D E R</b>
	)	
Respondent.	)	Magistrate Judge Brooke Wells

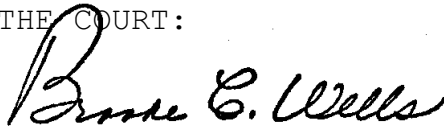
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Petitioner filed a self-styled "Petition under 28 U.S.C. § 2254 for Writ of Habeas Corpus." However, because of the unorthodox format Petitioner has chosen and the confusing nature of his allegations, the Court cannot decipher Petitioner's claims in a way that allows it to process the petition. For instance, it is unclear but appears that Petitioner may not have exhausted his claims and may have a state post-conviction petition pending.

IT IS THEREFORE ORDERED that the Court Clerk mail to Petitioner a form petition under 28 U.S.C. § 2254 for Petitioner to complete in an organized, concise fashion and return to the Court within thirty days. In it, Petitioner must detail the dates upon which any direct appeals or state post-conviction petitions may have been filed and decided.

DATED this 31st day of August, 2006.

BY THE COURT:



BROOKE C. WELLS  
United States Magistrate Judge

Scott R. Jenkins, #1659  
Brian C Johnson, #3936  
Graden P. Jackson, #8607  
William B. Ingram, #10803  
STRONG & HANNI  
3 Triad Center, Suite 500  
Salt Lake City, Utah 84180  
Telephone: (801) 532-7080  
Facsimile: (801) 596-1508  
*Attorneys for Plaintiff/Counterclaim Defendant*

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IN THE UNITED STATES DISTRICT COURT,  
IN AND FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

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MONARCH HEALTH SCIENCES, a Utah  
corporation,

Plaintiff/Counterclaim Defendant,

v.

CHARLES CORKIN, an individual, MARY  
CORKIN, an individual, and AVCOR  
ENTERPRISES, INC., a Colorado  
corporation,

Defendants/Counterclaim Plaintiffs.

STIPULATED  
PROTECTIVE ORDER

Case No.: 2:06CV00440

Judge: Dale A. Kimball

Based on the Joint Stipulation and Motion for Protective Order, and for good cause  
appearing, it is:

HEREBY ORDERED, ADJUDGED and DECREED that a Protective Order shall  
issue in this case containing the following terms:

1. Confidential Information: In responding to discovery requests, whether made formally or informally, the producing party may designate documents or other materials “CONFIDENTIAL.” The producing party shall designate information “CONFIDENTIAL” only when that party has a good faith belief that the information so designated is confidential, contains trade secrets or other competitively sensitive information, or is potentially entitled to protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure or any other applicable law.

2. Any party producing documents or things containing information to be governed by this Protective Order, shall designate the document or thing by labeling it “CONFIDENTIAL.”

3. Unless otherwise ordered by the Court, information designated as “CONFIDENTIAL” may be used only for purposes of this litigation, and may be disclosed in this litigation only to the parties, employees or former employees of a party, their counsel, counsel’s staff, consultants, experts, mediators, and witnesses.

4. If any information designated as CONFIDENTIAL is to be filed with or submitted to the Court in connection with any proceedings in this action, such information shall be filed in sealed envelopes or containers marked with the name of the case and the notation:

CONTAINS CONFIDENTIAL  
INFORMATION COVERED BY  
PROTECTIVE ORDER TO BE OPENED  
ONLY (1) BY OR AS DIRECTED BY THE  
COURT OR (2) BY WRITTEN AGREEMENT  
OF THE PARTIES.

Courtesy copies of pleadings, papers or correspondence delivered to the Court or its clerk that contain confidential information shall also be so sealed and marked.

5. Confidential information may be used as deposition or trial exhibits in this action and shall continue to be marked as confidential throughout the proceeding.

6. Confidential information, including all information derived therefrom, and all copies, summaries, abstracts, excerpts, indices and descriptions of such information shall be held in confidence and shall be used only for purposes of this litigation, shall not be made public by any party or person entitled under the terms of this Protective Order to access to such information, and shall not be used for any financial, commercial, marketing, business, or other competitive purpose.

7. Upon final termination of this action, including all appeals, the party receiving confidential information may retain with its counsel of record in this case any of such information to the extent it includes or reflects the receiving attorney's work product or constitutes one complete set of all documents filed with the Court in this action. With respect to any such retained information, this Protective Order shall survive the final termination of this action and continue to be binding upon all persons to whom the information is disclosed hereunder. Within thirty (30) days of final termination of this action, including all appeals, all other copies and samples of confidential information and any other summaries, abstracts, excerpts, indices, and descriptions of such information shall be returned to the producing party's counsel or destroyed.

8. If any party contends that information marked as "CONFIDENTIAL" should not be the subject of this Protective Order, the party contesting the designation or restriction on access shall provide the other party written notice of its disagreement and state the reasons therefore. If, despite good faith effort, the dispute cannot be resolved informally within seven (7)

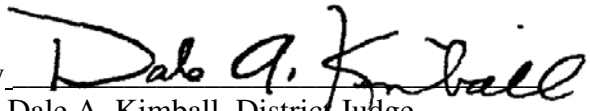


days of the producing party's receipt of the written notice, the party advocating the designation or restriction on access may seek relief from the Court by appropriate motion any time before the trial of this matter. Pending the Court's ruling, the party contesting the designation shall continue to treat the information in accordance with the "CONFIDENTIAL" designation.

9. Nothing herein shall be construed as a limitation on the right or ability of any party to assert that documents or information should be protected from production or disclosure under Rule 26(c) or any other rule or authority, or to seek appropriate protections as a condition of the production or disclosure, including, but not limited to, "attorneys' eyes only" protection.

DATED this 31<sup>st</sup> day of August, 2006.

UNITED STATES DISTRICT COURT

By   
Dale A. Kimball, District Judge

Approved as to form:

/s/ Richard B. Caschette      8/28/06

\_\_\_\_\_  
Richard B. Caschette  
Attorneys for Defendants/Counterclaim Plaintiffs

FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 12:10

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

Jon H. Rogers #6434  
Attorney for Plaintiff  
803 North 300 West, Suite N144  
Northgate Business Center  
Salt Lake City, Utah 84103  
Telephone: (801) 532-6272  
Telefacsimile: (801) 532-4192  
E-mail: [jhrogers@burgoyne.com](mailto:jhrogers@burgoyne.com)

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION

PAMELA S. BOND,

Plaintiff,

vs.

CREDIGY RECEIVABLES, INC.,  
a Nevada Corporation,

Defendant.

NOTICE OF DISMISSAL  
WITH PREJUDICE


**ORDER**

Civil No. 2:06-CV-531 DAK

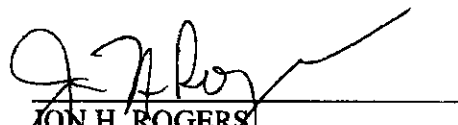
COMES NOW the Plaintiff, by and through counsel, and hereby give notice that the above-entitled action be Dismissed With Prejudice pursuant to RULE 41(a)(1) of the FEDERAL RULES OF CIVIL PROCEDURE, where no answer or other response to Plaintiff's COMPLAINT has been served upon the Plaintiff or Plaintiff's counsel or otherwise filed in the action.


DATED this 28<sup>th</sup> day of August, 2006.

**SO ORDERED**

  
**DALE A. KIMBALL**  
United States District Judge

Date August 29, 2006

  
**JON H. ROGERS**  
Attorney for Plaintiff

  
Honorable Judge Ted Stewart  
United States District Court

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CENTRAL DIVISION

DISTRICT OF UTAH

DEPUTY CLERK

---

SHAWN ALLRED,	)	
	)	
Plaintiff,	)	Case No. 2:06-CV-567 TS
	)	
v.	)	District Judge Ted Stewart
	)	
JANET BARTON et al.,	)	<b>ORDER</b>
	)	
Defendants.	)	Magistrate Judge Samuel Alba

---

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$5.72. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

---

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$5.72 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.


(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 3<sup>rd</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA  
U. S. Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 2:06-CV-567 TS), understand that even though the Court has granted my application to proceed in *forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$5.72, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions

imposed by the District Court.

---

Signature of Inmate  
Shawn Allred



United States District Court  
for the  
District of Utah  
August 31, 2006

\*\*\*\*\*MAILING CERTIFICATE OF THE CLERK\*\*\*\*\*

RE: Shawn Allred v Janet Barton  
2:06cv567 TS

Inmate Shawn Lee Allred, #203943-F503  
Weber County Jail  
PO Box 14000  
Ogden, UT 84412

---

Kim Forsgren,

HOLME ROBERTS & OWEN LLP  
Eric G. Maxfield, #8668  
Robert P.K. Mooney, #10789  
299 South Main Street, Suite 1800  
Salt Lake City, Utah 84111-2263  
Telephone: (801) 521-5800  
Facsimile: (801) 521-9639

*Attorneys for Plaintiffs*

FILED  
U.S. DISTRICT COURT  
2006 AUG 31 A 10:35  
DISTRICT OF UTAH  
BY: DEPUTY CLERK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

RONALD E. DOWDA, an individual, and  
SARA L. DOWDA, an individual,

Plaintiffs,

v.

CHARLES ADAIR, an individual; ADAIR  
CONSTRUCTION, INC.,  
a Utah corporation; BUY IN UTAH, INC.  
d/b/a REMAX PROFESSIONALS, a Utah  
corporation, ODETE CESAR, an individual,  
and JOHN DOES 1-10,

Defendants.

**STIPULATION ORDER TO STAY  
MOTION TO DISMISS**

Case No. 2:06CV00580 DB

Judge Dee Benson

Based upon the Stipulation to Stay Motion to Dismiss between counsel for plaintiffs and counsel for defendants Buy in Utah, Inc. d/b/a Remax Professionals and Odete Cesar concerning staying any further action on said defendants' August 11, 2006 Motion to Dismiss, and good cause appearing, it is hereby ORDERED that:

1. Any action on said defendants' August 11, 2006 Motion to Dismiss is stayed pending the conclusion of mediation between plaintiffs and defendants Buy in Utah, Inc. d/b/a Remax Professionals and Odete Cesar.

DATED this 31<sup>st</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, reading "Dee Benson". The signature is written in a cursive style with a large, stylized "D" and "B".

---

Dee Benson  
U.S. District Court Judge

Approved as to form and content:

HOLME ROBERTS & OWEN LLP

/s/ Eric G. Maxfield  
Eric G. Maxfield  
Robert P.K. Mooney  
*Attorneys for Plaintiffs*

KIRTON & McCONKIE

/s/ Robert R. Wallace  
Robert R. Wallace  
*Attorneys for Buy in Utah, Inc.*  
*d/b/a Remax Professionals*

FILED  
U.S. DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
2006 AUG 31 A 10:43

CENTRAL DIVISION

DISTRICT OF UTAH

SHAWN ALLRED,

Plaintiff,

v.

STEPHEN R. MCCAUGHEY et al.,

Defendants.

BY:

DEPUTY CLERK

Case No. 2:06-CV-600 PGC

District Judge Paul Cassell

**ORDER**

Plaintiff, Shawn Allred, filed a *pro se* prisoner civil rights complaint.<sup>1</sup> The Court has already granted Plaintiff's request to proceed without prepaying the entire filing fee.

Even so, Plaintiff must eventually pay the full \$350.00 filing fee required.<sup>2</sup> Plaintiff must start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month period immediately preceding the filing of the complaint."<sup>3</sup> Under this formula, Plaintiff must pay \$5.72. If this initial partial fee is not paid within thirty days, or if Plaintiff has not shown he has no means to pay the initial partial filing fee, the complaint will be dismissed.

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1915(b)(1).

<sup>3</sup>*Id.*

Plaintiff must also complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the balance of the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Although the Court has already granted Plaintiff's application to proceed *in forma pauperis*, Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(2) Plaintiff must pay an initial partial filing fee of \$5.72 within thirty days of the date of this Order, or his complaint will be dismissed.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at

Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 30<sup>th</sup> day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'S. Alba', is written over a horizontal line.

SAMUEL ALBA  
U.S. Chief Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, Shawn Allred (Case No. 2:06-CV-600 PGC), understand that even though the Court has granted my application to proceed in *forma pauperis* and filed my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I, Shawn Allred, hereby consent for the appropriate institutional officials to withhold from my inmate account and pay to the court an initial payment of \$5.72, which is 20% of the greater of:

- (a) the average monthly deposits to my account for the six-month period immediately preceding the filing of my complaint or petition; or
- (b) the average monthly balance in my account for the six-month period immediately preceding the filing of my complaint or petition.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions



imposed by the District Court.

---

Signature of Inmate  
Shawn Allred

United States District Court  
for the  
District of Utah  
August 31, 2006

\*\*\*\*\*MAILING CERTIFICATE OF THE CLERK\*\*\*\*\*

RE: Shawn Allred v Stephen R. McCaughey  
#2:06cv600 PGC

Inmate Shawn Lee Allred  
Weber County Jail, # 203943  
P.O. Box 14000  
Ogden, UT 84412

---

Kim Forsgren,

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
2006 AUG 31 A 10: 08  
CENTRAL DIVISION

DISTRICT OF UTAH

<p>PARIS ALANIS-SAMANO,</p> <p>Petitioner,</p> <p>vs.</p> <p>UNITED STATES OF AMERICA,</p> <p>Respondent</p>	<p>BY: _____ DEPUTY CLERK</p> <p>ORDER</p> <p>Case No. 2:06-CV-682 TC</p> <p>Criminal Case No. 2:04 CR 343 TC</p>
--	---

On August 16, 2006, federal prisoner Paris Alanis-Samano filed a Motion to Vacate, Set Aside or Correct Sentence by a Person in Federal Custody, pursuant to 28 U.S.C. § 2255.<sup>1</sup> Mr. Alanis-Samano presents several issues for review. For the reasons set forth below, the court does not have subject matter jurisdiction over Mr. Alanis-Samano's §2255 Motion.

### DISCUSSION

On August 24, 2004, Mr. Alanis-Samano pleaded guilty to one count of illegal re-entry of a deported alien (8 U.S.C. § 1326). On November 29, 2004, Mr. Alanis-Samano was sentenced to thirty-seven months of confinement and thirty-six months of supervised release following release from confinement. (Judgment filed December 1, 2004) On July 21, 2005, Mr. Alanis-

---

<sup>1</sup>In the August 16, 2006 Petition, movant identifies himself as Alanis Samano. However, in previous court records, specifically the underlying criminal case (2:04 CR 343) and the previous civil case brought under 28 U.S.C. § 2255 (2:05 CV 617), the movant is identified as Paris Alanis-Samano.

Samano filed a petition under § 2255 seeking correction of the very same sentence he now seeks to have corrected. (See July 21, 2005 Petition Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence By a Person in Federal Custody, Case No. 2:05 CV 617-TC (Docket Entry No. 1).) The court denied that petition. (See August 2, 2005 Order, Case No. 2:05 CV 617-TC (Docket Entry No. 2).)

Mr. Alanis-Samano's §2255 Motion currently before the court is a "successive petition."

[1] The Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214 (1996), amends 28 U.S.C. §§2244 and 2255, altering the procedures for filing habeas petitions under §2254 and §2255 motions. The statutes now require a movant who seeks to file a second or successive motion to first apply to the appropriate court of appeals for an order authorizing the district court to consider the successive motion. 28 U.S.C. §§2244(b)(3), 2255.

If the movant does not obtain leave from the appropriate court of appeals before filing his successive §2255 Motion, the district court lacks subject matter jurisdiction over the claim.

United States v. Torres, 282 F.3d 1241, 1246 (10th Cir. 2002). The Tenth Circuit has held that "when a second or successive petition for habeas corpus relief under § 2254 or a § 2255 motion is filed in the district court without the required authorization by this court, the district court should transfer the petition or motion to this court in the interest of justice pursuant to [28 U.S.C.] § 1631." Coleman, 106 F.3d at 341.

Mr. Alanis-Samano's §2255 Motion is not accompanied by any authorizing order from the Tenth Circuit Court of Appeals. Accordingly, this court lacks subject matter jurisdiction over his claim. His §2255 Motion must be transferred to the appropriate court of appeals, in this case the Tenth Circuit.

**ORDER**

For the foregoing reasons, the Clerk of the Court is directed to transfer this case to the Tenth Circuit Court of Appeals.

DATED this 30th day of August, 2006.

BY THE COURT:

A handwritten signature in black ink that reads "Tena Campbell". The signature is written in a cursive, flowing style.

TENA CAMPBELL  
United States District Judge

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

FILED  
U.S. DISTRICT COURT

RECEIVED CLERK

AUG 28 2006

U.S. DISTRICT COURT

2006 AUG 29 P 3:38

Elaine L. Chao, Secretary of Labor, United  
States Department of Labor,

DISTRICT OF UTAH

CASE NO. 2:06CV00700 TC

BY:

DEPUTY APPEARING ON BEHALF OF:

Plaintiff

v.

Paragon Contractors Corp., and Brian Jessop  
individually, and James Jessop, individually,

Defendants.

Elaine L. Chao, Secretary of Labor,

Plaintiff

MOTION AND CONSENT OF DESIGNATED ASSOCIATE LOCAL COUNSEL

I, Jeffrey E. Nelson, hereby move the pro hac vice admission of petitioner to practice in this Court. I hereby agree to serve as designated local counsel for the subject case; to readily communicate with opposing counsel and the Court regarding the conduct of this case; and to accept papers when served and recognize my responsibility and full authority to act for and on behalf of the client in all case-related proceedings, including hearings, pretrial conferences, and trials, should Petitioner fail to respond to any Court order.

Date: August 25, 2006.

(Signature of Local Counsel)

2386  
(Utah Bar Number)

APPLICATION FOR ADMISSION PRO HAC VICE

Petitioner, Katherine Vigil, hereby requests permission to appear pro hac vice in the subject case. Petitioner states under penalty of perjury that he/she is a member in good standing of the bar of the highest court of a state or the District of Columbia; is (i) x a non-resident of the State of Utah or, (ii)     a new resident who has applied for admission to the Utah State Bar and will take the bar examination at the next scheduled date; and, under DUCivR 83-1.1(d), has associated local counsel in this case. Petitioner's address, office telephone, the courts to which admitted, and the respective dates of admission are provided as required.

Petitioner designates Jeffrey E. Nelson as associate local counsel.

Date: August 25, 2006.

Check here x if petitioner is lead counsel.

Katherine Vigil  
(Signature of Petitioner)

Name of Petitioner: Katherine Vigil Office Telephone: 303-844-1757

(Area Code and Main Office Number)

Business Address: Office of the Solicitor, U.S. Department of Labor  
(Firm/Business Name)  
1999 Broadway, Suite 1600 Denver, CO 80202  
Street City State Zip

**BAR ADMISSION HISTORY**

COURTS TO WHICH ADMITTED	LOCATION	DATE OF ADMISSION
<u>State of Colorado</u>	<u>Colorado</u>	<u>1980</u>
<u>U.S. District Court</u>	<u>Colorado</u>	<u>1983</u>

(If additional space is needed, attach separate sheet.)

**PRIOR PRO HAC VICE ADMISSIONS IN THIS DISTRICT**

CASE TITLE	CASE NUMBER	DATE OF ADMISSION
<u>Secretary of Labor v. Lakeridge</u>	<u>2:02CV-00483 DB</u>	<u>2002</u>
<u>Secretary of Labor v. Jolene's-Draper</u>	<u>2:05-CV-0664 DB</u>	<u>2006</u>
<u>Secretary of Labor v. AKI Industries</u>	<u>2:06CV-00081 DAK</u>	<u>2006</u>

(If additional space is needed, attach a separate sheet.)

## ORDER OF ADMISSION

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of DUCiv R 83-1.1(d), the motion for Petitioner's admission pro hac vice in the United States District Court, District of Utah in the subject case is GRANTED.

This 29 day of Aug, 2006.

Tara Campbell

U.S. District Judge

NO FEE REQUIRED



FILED  
U.S. DISTRICT COURT

2006 AUG 30 P 1:54

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

CLERK OF COURT

CENTRAL DIVISION

BY: DEPUTY CLERK

iMergent, Inc., et al,

:

Plaintiff,

:

ORDER OF RECUSAL

vs.

:

Francine A. Giani, et al,

:

Case No. 2:06-cv-720

Defendant.

:

I recuse myself in this case, and ask that the appropriate assignment card  
equalization be drawn by the clerk's office.

DATED this 29th day of August, 2006.

BY THE COURT:

  
\_\_\_\_\_  
Ted Stewart  
United States District Judge

Judge Paul G. Cassell  
DECK TYPE: Civil  
DATE STAMP: 08/31/2006 @ 13:00:31  
CASE NUMBER: 2:06CV00720 PGC

UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH

DAVID TYLER AND DAVID D'EWART,  
ON BEHALF OF THEMSELVES AND OTHERS  
SIMILARY SITUATED,

*Plaintiffs,*

v.

LEGACY LEARNING, LLC D/B/A  
PROFESSIONAL EDUCATION INSTITUTE  
PEI

*Defendant.*

**ORDER FOR PRO HAC VICE  
ADMISSION**

C.A. No. 2:06-cv-00725

U.S. District Court Judge Dale A. Kimball

---

It appearing to the Court that Petitioner meets the pro hac vice admission requirements of  
DUCiv R 83-1.1(d), the Motion for the Admission pro hac vice of Richard J. Burch and David I.  
Moulton in the United States District Court, District of Utah in the subject case is GRANTED.

Dated: this 30<sup>th</sup> day of August, 2006.

  
U.S. District Judge Dale A. Kimball

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH - CENTRAL DIVISION

FILED  
U.S. DISTRICT COURT

2006 AUG 31 A 10:35

DIANE BENNETT,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

DISTRICT OF UTAH

BY: \_\_\_\_\_  
DEPUTY CLERK

**ORDER**

Case No. 2:06-CV-0730

Related to: 2:03-CR-0608

Before the Court is Petitioner's motion, pursuant to 28 U.S.C. § 2255, to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody. The Court ORDERS the United States Attorney to respond to the motion within forty-five (45) days of the date of this Order.

IT IS SO ORDERED.

DATED this 3<sup>rd</sup> day of August, 2006.



Dee Benson  
United States District Judge

United States District Court  
for the  
District of Utah  
August 31, 2006

\*\*\*\*\*MAILING CERTIFICATE OF THE CLERK\*\*\*\*\*

RE: Diane Bennett v United States of America  
2:06cv0730

Inmate Diane Bennett, #10797-081  
Daggett County Jail  
P.O. Box 579  
Manila, UT 84046

---

Kim Forsgren,

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

FILED  
DISTRICT COURT  
2006 AUG 30 P 2:43

JOHN WILFORD ESTERHOLDT,

Plaintiff,

v.

UTAH COUNTY JAIL et al.,

Defendants.

Case No.

**O R D E R**

DISTRICT OF UTAH  
BY: DEPUTY CLERK

Plaintiff, John Wilford Esterholdt, an inmate at Utah County Jail, submits a *pro se* civil rights complaint.<sup>1</sup> The filing fee is typically \$350.<sup>2</sup> However, Plaintiff asserts he is unable to prepay it. He thus applies to proceed without prepaying the filing fee and submits a supporting affidavit under section 1915(a).<sup>3</sup>

The Court will allow Plaintiff to proceed without prepaying the entire filing fee. Even so, under section 1915(b)(1), Plaintiff must eventually pay the full \$350.00 fee required.<sup>4</sup> A plaintiff must typically start by paying "an initial partial filing fee of 20 percent of the greater of . . . the average monthly deposits to [his inmate] account . . . or . . . the average monthly balance in [his inmate] account for the 6-month

<sup>1</sup>See 42 U.S.C.S. § 1983 (2006).

<sup>2</sup>See 28 *id.* § 1914(a).

<sup>3</sup>See *id.* § 1915(a).

<sup>4</sup>See *id.* § 1915(b)(1).

Judge Ted Stewart  
DECK TYPE: Civil  
DATE STAMP: 08/30/2006 @ 14:51:01  
CASE NUMBER: 2:06CV00731 TS

period immediately preceding the filing of the complaint."<sup>5</sup>

However, Plaintiff's inmate account records show he has no money; the Court thus waives his initial partial filing fee.

Still, Plaintiff must complete the attached "Consent to Collection of Fees" form and submit the original to the inmate funds accounting office and a copy to the Court within thirty days so the Court may collect the entire filing fee Plaintiff owes. Plaintiff is also notified that pursuant to Plaintiff's consent form submitted to this Court, Plaintiff's correctional facility will make monthly payments from Plaintiff's inmate account of twenty percent of the preceding month's income credited to Plaintiff's account.

IT IS THEREFORE ORDERED that:

(1) Plaintiff may proceed without prepaying his filing fee and without paying an initial partial filing fee.

(2) Plaintiff must still eventually pay \$350.00, the full amount of the filing fee.

(3) Plaintiff must make monthly payments of twenty percent of the preceding month's income credited to Plaintiff's account.

(4) Plaintiff shall make the necessary arrangement to give a copy of this Order to the inmate funds accounting office at Plaintiff's correctional facility.

---

<sup>5</sup>*Id.*

(5) Plaintiff shall complete the consent to collection of fees and submit it to the inmate funds accounting office at Plaintiff's correctional facility and also submit a copy of the signed consent to this Court within thirty days from the date of this Order, or the complaint will be dismissed.

DATED this 25 day of August, 2006.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'DAVID NUFFER', is written over a horizontal line.

DAVID NUFFER  
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

CONSENT TO COLLECTION OF FEES FROM INMATE TRUST ACCOUNT

I, John Wilford Esterholdt, understand that even when the Court grants my application to proceed *in forma pauperis* and files my complaint, I must still eventually pay the entire filing fee of \$350.00. I understand that I must pay the complete filing fee even if my complaint is dismissed.

I further consent for the appropriate institutional officials to collect from my account on a continuing basis each month, an amount equal to 20% of each month's income. Each time the amount in the account reaches \$10, the Trust Officer shall forward the interim payment to the Clerk's Office, U.S. District Court for the District of Utah, 350 South Main, #150, Salt Lake City, UT 84101, until such time as the \$350.00 filing fee is paid in full.

By executing this document, I also authorize collection on a continuing basis of any additional fees, costs, and sanctions imposed by the District Court.

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Signature of Inmate  
John Wilford Esterholdt



BRETT L. TOLMAN, United States Attorney (#8821)  
PAUL F. GRAF, Special Assistant United States Attorney (#1229)  
Attorneys for the United States of America  
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**FILED**

**AUG 24 2006**

IN THE UNITED STATES DISTRICT COURT OF THE DISTRICT OF UTAH, CENTRAL DIVISION  
~~ROBERT T. BRAITHWAITE~~  
MAGISTRATE

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UNITED STATES OF AMERICA, : 2:06-PO-552

Plaintiff, : MOTION FOR LEAVE TO  
DISMISS, ORDER GRANTING  
vs. : LEAVE TO DISMISS, AND  
DISMISSAL

AARON M. BOLLI, : *# 2:06-po-00552*

Defendant. : Magistrate Robert T. Braithwaite

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Pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the United States Attorney for the District of Utah hereby moves for leave to dismiss the Misdemeanor Information against AARON M. BOLLI for the reason that: the government does not wish to proceed at this time.

Subject to the Court granting the Government's Motion For Leave To Dismiss and pursuant to Rule 48(a) of the Federal Rules of Criminal Procedure, the Misdemeanor Information pending against the defendant is hereby dismissed without prejudice.

DATED this *24* day of August, 2006.

BRETT L. TOLMAN

United States Attorney

Paul F. Graf

Special Assistant US Attorney

**ORDER GRANTING LEAVE TO DISMISS**

Based upon the motion of the United States of America, and for good cause appearing, the Court hereby grants leave under Rule 48(a) of the Federal Rules of Criminal Procedure for the dismissal without prejudice of the Misdemeanor Information against the defendant.

DATED this *24* day of *Aug*, 2006.

BY THE COURT:

*[Signature]*

United States Magistrate